

dealer would be carrying Naturalizer shoes, which is one of our better grades ladies' lines. That was the line and the man decided to buy Red Cross shoes, directly conflicting price-wise, pattern wise. He makes the decision. What that man purchases from Red Cross would increase to the point where his Naturalizer purchases would decrease, where we could no longer find ourselves in a position—I am speaking now of our field representative—to go in the store and counsel with the man on his merchandising efforts with Naturalizers, because he had decided to buy Red Cross, and possibly replace Naturalizer with Red Cross.

We find ourselves in the position of not being able to be of much help in counselling with the man, because we are not familiar with the Red Cross function, not as familiar with the many functions of their business as we are with ours. So how can a field representative sit down and consult with a person on a line that he is totally unfamiliar with?

As to whether he could still consult on others, say Buster Brown's that were still in there, the witness said, yes, but the man has made his decision and as we discussed or as I testified, the program is particularly designed to encourage a helpfulness to the retailer and also on concentration. Now if the man so elects not to concentrate with us, that is his own choice. There are plenty of successful retailers, concentrating on a few lines, not us, but they do real well on an average, and that is why we [fol. 211] feel the net result of concentration is the best route to take for the most successful family shoe store business.

Concentration in women's shoes pretty much depends on the length of the women's lines. By classification, they are broken down into approximately what they call women's high-heeled and medium-heeled structures, service type shoes, casual shoes and the flat shoes in their particular category.

Counsel for the Commission said he was trying to understand whether the styling of shoes, in the women's line particularly, is important in having a salable line of shoes. By styling he means open toes, lace, frills or bells. The witness said it depends entirely on the market that a line

of shoes is trying to reach. If it were a very high fashion, high priced line of women's shoes, he is sure you would find many more frills that you would find in a line like Naturalizer. Naturalizer's line is known in the trade as the middle of the road, medium priced line of women's dress shoes, casuals and service shoes, and when he says service shoes he is referring to shoes like Clinic nurses, waitresses and beauticians. Air Step is basically no different from Naturalizer. There is a little change in the pattern, a little difference in the ornament on one shoe than on the other. Basically, they appeal to the same customer, not only age but in the price category as well. They both retail for about the same.

Two lines conflicting in price do not necessarily mean they conflict in style. One might be a high style shoe. It would depend on the length and breadth of the line. There are price lines in the same category with Naturalizer and Air Step that are typical fashion lines of shoes. And there are other lines that are, that do not have the length and breadth that the Naturalizer might have. Not too much depends on whether it is in the same price category, but it depends pretty much on the type of market you are gearing your line and your various classifications to.

The witness was asked what determines which shoe store gets the business of a girl who has \$15.00 and is going down to buy her Easter shoes, and two stores right alongside one another are the stores she visits. He feels [fol. 212] that the place that person goes to buy shoes pretty much depends on the kind of impression that retailer has made on her prior to that occasion and how he functions as a retailer, because where a person buys, has a lot to do with how they may have been treated in that store prior to that time.

Women are quite interested in the style of shoes they are going to buy. You change your styles periodically in women's shoes. How often, depends on how long a style might continue to be accepted at the retail level, the consumer level. How long it will sell. You have new styles being introduced periodically. That is done on a broad scale twice a year and on a less elaborate scale two additional times a year. So, you might say, you have new shoes introduced

and presented to the industry four times a year. The woman buyer is likely to try 3 or 4 stores looking for a style that will please her.

It is not reasonable to suppose that the more style you have the more likely you are to get that purchase. The witness said, more sales in a retail store are lost because the retailer does not have the size to fit the customer in the style she might be interested in, than because of the pattern selection. They might have 18 different patterns, but lo and behold they don't have her size in the pattern that she eventually decides that she likes. So the theory is, and it is a good theory based upon performance, they buy fewer patterns, more sizes. In that way you have a good representation of the styles. That is a good retailer theory. Any good retailer will buy that, and does buy that. So you have sizes and fewer patterns. More sales are lost because of the lack of size than the lack of pattern selection. Pattern or style is considered the same. I use them both in the same manner.

The witness testified that another reason why concentration is advisable is because the dealer has fewer salesmen calling on him. He would have fewer salesmen calling on him if he had fewer lines, simply because if he was dedicated to carrying fewer lines, most salesmen after the second, third, fourth or fifth try would say, "I have tried to sell this gentleman on previous occasions and [fol. 213] I haven't been successful. There is no use calling on him any more." And the law of average would work on the retailer's behalf, because of the number of salesmen on the road. As to whether Brown allows their salesmen to pass up prospects with that kind of thinking, he said their salesmen are absolutely responsible for distribution in that particular territory. It is not a question of letting them or not letting them. The witness is not in charge of salesmen as such, but his answer was predicated on the fact that he has a reasonable knowledge of what some of the functions of the sales divisions are. If they have a blank spot in distribution they urge salesmen to fill it. If it is a town that he is going to any way he might as well stop.

The witness testified that it would not be good retailing to select a hot item from several different lines. Spot items. The net result would be that the retailer would

lose sales because of inventory problems he would have, the merchandising problem, the advertising problem, and that all eventually has to catch up with you and the net result is less sales on a profitable basis.

Taking a woman's spectator pump as an example, the witness was asked why it wouldn't be good retailing not to buy that pump from another manufacturer, just that pump in a full range of sizes, just as if they were buying it from Brown. The witness said, well, simply because it makes a more complicated selling job for the retailer, number one. If that customer had come into his store on previous occasions and had bought another pump in a similar category, basically the type of shoe she would normally wear, and then she would come in and would want to buy a spectator in that category and the retailer offers her another brand, she might be skeptical because she liked the last she was wearing, or the pattern in the other brand. Naturally, the retailer hopes she was very well satisfied and the retailer sometimes has a problem in reselling that customer on some other brand, or some other last within the brand, and it creates some skepticism in the mind of your consumer, which is very poor, poor retailing. All the different manufacturers use different lasts and not only does [fol. 214] it raise skepticism in the minds of the consumer because the retailer is trying to sell her another brand, but she apparently was satisfied with the other brand on her last visit and from the standpoint of brands and the standpoint of lasts, it might not fit her too well. You don't know until you have tried.

They think shoe customers are brand conscious. That is part of the reason behind the advertising campaign to make them brand conscious. Counsel for the Commission said presumably if the customer is brand conscious and you don't have the brand she wants, she is not going to buy. The witness said that is correct, unless she sees, she might see a brand advertised and in the community where she lives there might not be a store convenient where she can buy that brand, so as a result of that she might go into a store that doesn't carry that brand but she might find another brand in trying on the shoes and wearing them that might satisfy her, just as well as the advertised brand. Ladies, while they are brand conscious, and I think



this is true in the shoe business as well as in the ready-to-wear business, millinery business. I think women buy on impulse. They see something they like, and if it fits well and looks attractive on them, they buy it. There is not too much real brand shopping.

There is no truth to the legend that fit is not important to a woman. Women today are much more conscious of fit than they were years ago. Years ago women were pretty much size conscious, they wanted to have a 5B or the smallest size they could get on their foot, so that they could know that you were putting on only the size that they asked for and it seemed that years ago women took pride in how small their shoe size was. Today they are much more fit conscious, and they want comfort, and they are not nearly as size conscious as they were years ago. They not only care if they are small, they pretty much want something that looks well and that fits them.

Counsel for the Commission referred to previous testimony by the witness concerning the inability of a dealer to successfully handle several conflicting lines because [fol. 215] they don't keep up with the market in the industry. As to whether these retailers are the most qualified persons to deal with their own customers, or whether there is any one more qualified to determine the demands of their own clientele, the witness said, no, they are the most qualified. He wouldn't say always the most highly qualified, but they should be in the best position to know what would sell in their own store. They don't travel to see what other sections of the country might be doing in the way of introducing new items of promotion. So as a result of that they live and work in a rather confined area, and they are not exposed to possibly as many other techniques and methods that some of the larger department store operators or chain store operators are exposed to in the metropolitan cities. There are many dealers in smaller communities—5,000-30,000 population—who don't have the personnel that enables them to get away as often as some people from either large volume brackets or metropolitan cities where the market is more convenient to them.

The Hearing Examiner said he had trouble understanding how getting away does any good. The witness said

there are two facets of it. He certainly agrees a man is best qualified to know what is selling in his store, simply by knowing the people in the community and knowing what sales he is making, and what sales he might be losing, and studying records on his inventory. But the thing he is referring to is the new business that the man might be able to do by bringing in additional merchandise into his store, by seeing other areas of the country. The lines of the different manufacturers are not brought to a dealer in all cases. For example, this weekend the Dallas shoe show will start. This is a regional show, and some dealers come into Dallas to buy their requirements, that is the smaller percentage, and other dealers will buy merchandise in the store as the salesman calls on them. But many of the salesmen who work the regional shoe shows don't make the small towns, and the very small communities because of the size of their territory. So if a dealer wants to expose himself to certain lines it is either a question of him going to the shoe show or he does not see the line.

[fol. 216] The witness was asked, why not advance shoes to the retailer in order to give the public a choice of 2 or 3 brands. He said the retailer can do so if that is his choice. There is nothing that says he cannot do that. If it is profitable for him he will continue to do it, but if it is not profitable for him the witness doesn't think he will do it. That is, not if he wants to remain competitive and still operate a profitable business.

The witness testified about 80 percent of the Brown franchise dealers carry other lines. He did not give an estimate as to how many carried conflicting lines. His estimate on that would not be as accurate because it is a little easier to offer a total than to break it down as to a high price conflicting line or a low price conflicting line. He would say possibly 50 percent of the stores carry a line that directly conflicts with Brown. As to whether that would be an entire line of shoes, the witness said, no, when you consider that, it might be an entire line of what that line represents, but not an entire line as long as another entire line. In other words one line might be shorter than the other.

He does not know how many franchise dealers carry a

line that completely conflicts, that did not carry Naturalizer or Air Step but that carried in lieu thereof a complete line of women's shoes. He said, you might use the line of Clinics. That is a short line of women's basic service type of shoe. Now we have those same numbers of patterns approximately, maybe with the exception of one or two that are included in the Naturalizer line. While the Clinic line is very short, he would estimate that Clinic shoes are sold in several hundred Brown franchise stores. They are service type of shoe, for beauticians, waitresses, and nurses. It would conflict with segments of the line, more than two or three, because the Clinic line is broader than two or three patterns, and the pattern offered to the retailer in that same category from Naturalizer are more than two or three. The witness thinks it amounts to about 6 or 7.

A high priced line of shoes, a line of men's or women's shoes priced anywhere from \$5 to \$10 to \$15 higher than Brown's lines, would not be considered a conflicting [fols. 217-219] line. The same is true at the other end of the scale, the lower priced line. A line of work shoes would not be a conflicting line. Brown is essentially not in the work shoe business, and rubber shoes such as canvas shoes, the work and play type, would not be considered conflicting. The witness knows of many franchise stores that do not carry work shoes from anybody, including Brown Shoe Company. There are such a few patterns that Brown has to offer. He would say very few franchise stores don't carry sneakers, but there are many that do not carry work shoes from anybody. By and large the great percentage do, but there are a few that would not carry the canvas or the sneaker, open top, or casual type. These outside lines would not be considered conflicting lines, by the nature of their construction, because Brown does not have that type of product to offer the customer.

There is no different commission paid to Brown salesmen on sales to franchise stores than to other stores.

The witness stated on direct examination that they preferred franchise stores to carry insurance. It is not required that they use the Brown insurance plan. In fact, he thinks the record will indicate that many of the franchise stores elected not to carry their insurance.

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[fol. 220]

May 4, 1960

HAROLD J. LAVERENZ, called as a witness for the Commission, testified as follows:

#### Direct examination

The witness was subpoenaed to appear here today. He is Sales Supervisor of the Huth-James Shoe Company, and has been in that position about ten years. The office of the Company is at 1039 South Second Street, Milwaukee. The factory is in Waupun, Wisconsin.

The duties of the witness are to hire the salesmen, supervise their activities, call on make-up accounts, and occasionally travel with the salesmen who call upon the independent retailers. He was employed by the Company prior to becoming Sales Supervisor. For a period of two years, 1948 and 1949, he traveled exclusively as a salesman in the Wisconsin territory.

The Company has a number of salesmen ranging from twelve to fifteen, and they cover the northern one-third of the country. They do not get into the New England states.

The witness was with the original Huth-James Shoe Manufacturing Company from 1932 through 1944. He was sales correspondent, and called on make-up accounts. The original Huth-James Shoe Manufacturing Company liquidated in 1944. The present Company, called Huth-James, Incorporated, while it does have some officers and stockholders in common, is a different entity. The present Company started in 1947. There was a three year gap of inactivity between the two companies. There is a difference in the name.

[fol. 221] The present officers of the Company are Mr. Edward C. Huth, President and Treasurer, Mr. Walter Sawyer, Vice-President, and the witness is Secretary.

The Company has one manufacturing plant, but it covers two buildings. Part of the process is started in one building, and then the shoes are completed in another. Each building is not a separate plant. His Company sells the upper one-third of the country. The witness named the following states in which its shoes are distributed: Washington, Oregon, Idaho, Montana, California, Minnesota, Wis-

consin, Iowa, Illinois, Michigan, Ohio, parts of Pennsylvania, and a part of New York state. Also included are North and South Dakota.

The Company manufactures presently boots, utility shoes, and dress and young men's shoes. By "boots", he means insulated boots, worn in the cold weather or hunting boots worn by hunters, either in late spring or early fall. The shoes are sold under the trade names Huth-James Float-Aways. The boots are Snow-Go. Another trade name is Sturdy-Style. Those are the major trade names.

How young an age group their shoes supply, depends, of course, on the size of the boy—but from about five, six or seven, upwards in age. The retail price range of the boys' shoes are from \$7.95 through \$8.95. The young men's shoes are from \$9.95 through \$11.95. Utility shoes—and these are in terms of today's prices—are \$11.95 through about \$14.95 and \$15.95, and boots are about \$17.95 through \$21.95. Utility shoes are those shoes worn by people in shops, filling stations, mail carriers on the street, filling station operators. They are a little bit more dressy than the average work shoe as known in the past days. Years ago people classified a work shoe as a shoe that was unlined. Today your utility shoe, as his Company makes it, and for the most part is lined. They are made quite well, they have a considerable amount of finesse. His Company makes so few work shoes that he could say in a general way it makes no unlined work shoe, except for one unlined hunting boot.

The witness is familiar with the price range and styles of shoes with which he competes. He is familiar with the [fol. 222] Brown line of men's and boy's shoes. As to whether his shoes are competitive or in the same price class with the Brown lines, he would say in a general way, yes. They do not have certain types which his Company makes. It is his impression that they do not have work or utility shoes to any great extent. But speaking of dress shoes, men's and boys', they compete. His shoes are priced to sell to about the same market as Brown shoes.

The witness would break their type of customers into two classes. Number one, make-ups which is becoming increasing in amount percentage wise. By make-ups he means large firms have his Company make up shoes for them to their order and specifications. The brand name

appearing on make-up shoes might be Montgomery Ward, Sears-Roebuck, or J. C. Penny. It is the brand of the buyer, and that is what is known in the industry as make-up. Then, sales to independent retailers. He sells directly to the retailer. His lines are presented to the retailers through salesmen on the territory. For the most part they work on a straight commission basis, and call only on retail customers. The retailer customer may be an individually owned store, a partnership, or a corporation. They are stores not owned by a manufacturer. The term family shoe store would not entirely describe the type of store. Some shoes are sold in men's clothing stores. A family shoe store, as generally known, covers everything from soup to nuts, from women's to children's to men's. As the name implies, it is a family shoe store.

His Company actually sells three types of retail customers: family stores, men's clothing stores, and department stores. As to their ranking in importance, he does not have any figures before him, and this is only a general impression, that while their sales to make-up accounts has increased, their sales to independent retailers has at the very best in most years just held its own or has gone down. The family shoe store, in the sales his Company makes to independent retailers, would perhaps represent 70, 75 percent. That is an estimate, an informed guess. His Company was selling about a thousand retailers in 1959.

[fol. 223] Their terms of sale to a retailer are 2 percent 20, net 30 days. As to whether they grant any more extended credit than that to the stores, the witness said yes, we ship on dating before the season. Furthermore, in the case of accounts west of the Rockies, the Company gives them additional terms. In that case it is 2 percent 45 days, net 60 days, as a regular thing. The reason for that is that there is quite a time lag in shipping from here to the west coast. So, conceivably the fellow on regular terms might be asked to discount or pay even before he had the merchandise, or shortly thereafter, if it were shipped on regular terms.

At this time Commission's Exhibit 139 was marked for identification. The witness was shown Commission's Exhibit 139 for identification and asked to identify it. This is a breakdown of his Company's sales in pairs and dollar



volume between make-up and sales to retailers for the years 1954, 1955, 1956, 1957, 1958 and 1959. These years were selected for no particular reason, but, of course, you cannot go much beyond 1959. Then, to go backwards would have meant some more delving into their records, and it took quite some time for this tabulation. The figures came from their ledgers and production records. Commission's Exhibit 139 was received in evidence.

Counsel for the Commission observed that Commission's Exhibit 139 showed that his Company's retail pairage had declined somewhat since 1954, being approximately 138,000 in 1954, 89,800 in 1958, and 111,000 in 1959, and asked the witness if he had made any attempt to determine the reasons for that. The witness answered we, of course, constantly write to the salesmen and ask them why they are not selling this account or that account, and as all manufacturers do, we encourage and urge the salesmen to increase their volume. If they are not selling an account we try to get the reason for it.

He means specific accounts. As to over-all volume the witness had two observations: One, that due to so-called larger manufacturers, this sales force cannot effectively [fol. 224] solicit those prospects. The other observation is that it appears an increasing pairage is sold in so-called shopping centers, traditional retail shopping centers are losing their importance. His company sells shoes in shopping centers in a few cases. However, in many shopping centers there are the leading stores which are chains. By chains, he does not mean retail shoe chains as such, but manufacturer-owned in many cases.

As to why the witness considers the shopping center movement a factor in his diminishing sales, he said that in many cases the independent retailer is not able from a financial standpoint to go into a shopping center. It requires a substantial outlay, very often quite high rent. Right here in Milwaukee the so-called traditional shopping areas are dying off and it would appear that a greater and greater percentage of your shoe volume is being done in shopping centers, where in most cases it is my observation, the outlet is not independently owned. It is controlled by a shoe manufacturer in many cases.

As to what he meant by the term "plans", the witness

said I don't know whether such plans are supported by an agreement or not. But from experience in traveling, myself, as a salesman and in working with our salesmen in the territory, when we go into a store and we see that the retailer has on his shelves almost 100 percent a line of one manufacturer, the next question usually is: "Are you on a plan or are you on a franchise?" The answer in many cases is yes. Then you might just as well move on, because from an effective standpoint your chances of selling such people are nil. Our salesmen are on a commission basis and they would rather move on to another account. Now, in many cases such outlets who are on a plan are the better accounts, in a city or a shopping area. They are more desirable. Therefore, we frequently have to settle for the less desirable outlet, less desirable from the standpoint of volume, and also perhaps less desirable from a credit standpoint.

As to whether the witness is familiar with the Brown Franchise Plan, he said if you are talking in terms of an [fol. 225] agreement, I am not familiar with it. If you are talking in terms of where a retailer is concentrating on their product, yes. There are Brown Franchise Stores within the territory he sells. He could cite one case to illustrate the point. He is not selling substantial amounts of shoes to any of the Brown Franchise Stores in his territory.

As to whether he had ever attempted to discover why he is not selling Brown Franchise Stores, the witness said from my own personal experience, when you contact the salesman and you say, "Why aren't you selling this account or that account" they say, "It is on a plan of some kind, of this kind, or that kind." I am referring back to this manufacturer's or that manufacturer's plan, and from that standpoint the plan saves him some time, he does not continue to call. When a salesman walks into a store that is on a plan, he is discouraged in that he is not encouraged by it, and if he continues to call and does not get a hearing, and is not allowed to bring in his line, he finally gives up calling on the account. Very frequently, he will ask the man, "Is there any use in my calling any more?" And the fellow is frank and says no, he is not interested, because he is on a plan.

The witness learned this by direct questions to his salesmen or accounts that he has called on. He has had that kind of experience in relation to Brown accounts. The witness has asked his salesmen specifically concerning the Brown Plan Stores.

Q. And what was their response?

Mr. Burke: Object to this line of questioning. I object to what some salesman said. It is hearsay and we are not bound by it. We are not bound by a salesman who is not on the stand.

I object to the question.

Hearing Examiner Creel: Overruled. You may answer.

A. They told me they did go to Brown Plan Stores and that there was no object in their calling any more, they just could not sell them.

[fol. 226] The witness has personally called on Brown Franchise Stores. He would like to cite one. Lindman Shoe Store here in Milwaukee. He said when I first started out on the road in 1948, and throughout the years between then and 1955, I continued to call on Mr. Lindman. Finally after getting no encouragement from him, I asked him, "Now, is it worth while for me to call any more? I don't seem to get any encouragement." He said something to this effect—I don't remember his exact words—"No, I guess it is not worth your while to call on me." He said he was on a plan, what the plan was, I don't know; but he was on it. You sort of run into a barrier there, when they say they are on a plan, you just run into a wall.

That is about as much as he knows about it. They did not tell him anything further. He has not seen a plan. That is just a term they use. He believes he would perhaps remember some Brown Franchise Stores if he were shown a list of them. He doesn't have the benefit of his ledgers here. Perhaps he would be able to identify some.

The witness was shown Commission's Exhibits 23 and 24, a list of Brown Franchise Stores listed alphabetically by state and asked whether he discovered any of his customers on that list. He did remember some accounts here. He has already referred to Lindman's Shoe Store. They were not able to sell them. Perhaps he called on them the

last time in the early '50s. Since then their salesman in the area has continued to call on them with no results. It is a family shoe store, quite a good size, in a good shopping area.

Hearing Examiner Creel: It is not clear to me whether you are naming the ones your company has called on or to which you actually make sales.

Mr. Rogel: I asked him whether they were customers.

Hearing Examiner Creel: Yes, I understand. But he is discussing Lindman; he called on them and didn't sell them. Just so it is clear.

The Witness: All right. I would say that Meyers Shoe Store, Watertown, Wisconsin, comes to mind. We sold [fol. 227] them at one time and then there was a lapse of some years. I am going by memory now. And recently we have started to sell them again. I don't know if they were a Brown Franchise store then, and later perhaps went off; but at least there was a period of quite a while when we did not sell them.

By Mr. Rogel:

Q. Did you sell them last year?

A. A little. Some in utility shoes, no dress.

Mr. Burke: What is the name of that?

The Witness: Meyers Shoe Store, Watertown, Wisconsin. There is Sault Sainte Marie, as I go through here. No—pardon me, I don't find that one in here.

I do know that in the case of this account at Sault Sainte Marie, we had been selling them; then for a period of time they didn't buy from us. I was told it was because of the plan. Now more recently they have started to buy again, and I am informed that it is because they have gone off the Plan.

Mr. Burke: I move to strike this testimony as founded completely on hearsay. There is no opportunity for respondent to cross-examine or be confronted with the witness.

Hearing Examiner Creel: I understand that. I am interested in knowing who informed you.

The Witness: Our salesman, Mr. Luther.

Hearing Examiner Creel: I don't know which account you are talking about.

The Witness: The account in Sault Sainte Marie, Michigan. It is—what is it—

Mr. Timony: Passmore.

Mr. Burke: Just a minute. Counsel for the Government should not be allowed to lead the witness, and put answers in his mouth. This is discovery information, and he is supplying the witness with answers.

Hearing Examiner Creel: Well, I don't think it should be done quite this way. I think it is technically proper that he ask him.

[fol. 228] Do you find this account on the list of Franchise holders in front of you?

The Witness: No, I don't find it here.

Mr. Rogel: I don't think it is here.

Hearing Examiner Creel: Did you look over the entire list for the States in which you sell?

The Witness: I did; well, I paged through them.

Hearing Examiner Creel: Those in the States where you sell; did you do that? As I understand, that was the question.

Mr. Burke: As I understand it, there are only two names so far.

Mr. Rogel: Meyers and Lindman that were on this list.

By Mr. Rogel:

Q. The question was to look through the list and see if you found any store to which you were selling. Cassidy Shoe Store, in California. Again, that name strikes a familiar note. The witness is sure they shipped some to that store. It is in Hanford, California. He would say that they shipped them prior to about 1955.

Master Shoe Company of Waukegan, Illinois, is one of their customers. They are selling them only the utility shoes. At one time his company shipped them boys' and young men's, but ceased selling them boys' and young men's shoes four or five years ago.

The witness is not making any substantial sales now to any of the accounts on the list he just examined. He does not recall the names of any shoe stores which may not be on that list, similar to the Passmore store which he formerly sold to, but which stopped buying from him and

which he learned was due to them going on the Brown Franchise Plan.

He cannot think of the names of any accounts of Brown Franchise Stores on the list that either he personally or [fol. 229] his salesmen have called on in the last four or five years and attempted to sell. He does not remember personally calling on any other Brown franchise stores when he was a salesman. He personally called on Meyers Shoe Store in Watertown, but he believes they were not then on the franchise.

There is a White Shoe Store in Green Bay, Wisconsin. He called on them in 1948, 1949, and 1950, or thereabouts, and was not successful in selling them. There was no encouragement given whatsoever. After that he succeeded in opening another account in that area, in Green Bay. Then he didn't call on them any more. As he recalls, White's handled Brown shoes. He couldn't be positive about that, but he knows a concentration plan was in effect there. He doesn't know whether it was Brown or not. He wants to be fair.

The witness was asked in what size towns, or what would be the population limits of the towns in which his average family shoe store is located. The witness said when you say the average, I would say beginning with 1500 people, upwards. It is quite difficult to say. You may have a good family shoe store in a town of 500 people, if it was the County Seat and the shopping area of the community. As to towns ranging from five to thirty thousand population, in a town of 35,000 you might have 20 to 25 outlets that would be available, including department stores, clothing stores and family shoe stores. It would be a catch all. When you would get down to around 5,000, he would say perhaps two, three, four, five. You can't limit the opportunities of a city by the immediate population. You have to consider also whether it is a shopping area. In the town where there are 4 or 5, or a town where there are as many as 20 or 25, all of these would not be good prospects for his line, because some necessarily would be higher priced and some lower priced than his.

It is difficult to answer how many would be available or desirable to him as customers. It depends again upon the city, and some cities just have low priced merchandise



entirely, depending upon the per capita income in the city. But he would say an average city of 5,000, there might [fol. 230] be three to five outlets, and he would say 2, perhaps 3, maybe 4 would be. In towns where there are four or five outlets and two or three might be good prospects, as to whether any of them are ever on the franchise programs he mentioned, the witness said I can't recall offhand any Brown Franchise account in the town of 5,000. It could be considered, I want to be absolutely fair and honest about this. I can't offhand name any, based on my own experience in calling on the trade, and traveling with the men.

#### Cross-examination.

The witness has about 12 to 15 salesmen on the average, and they work directly under him. Sales matters are not the only phase of his work with the Huth-James Company. He handles advertising and credit. In a company of their size, a man's duties are manifold. The witness handles those three general areas as his over-all duties.

The Company with which he is associated began in business in 1947. It didn't start selling shoes to the public until 1949. That is when he went on the road to introduce the line. He was the first salesman they had. In the intervening years his Company's sales of shoes have built up to a gross of some one million, eight hundred thousand dollars, according to Commission's Exhibit 139.

Looking at Commission's Exhibit 139, there are the two classifications of wholesale and retail. These are the only two classifications in which his Company markets its products. Retail would include any sales to jobbers. Sales to jobbers would be very, very minor, some years not at all. His Company, for instance, might sell close-outs to jobbers. They sell factory damaged shoes month after month to jobbers, but it is not segregated. It is infinitesimal. The wholesale is entirely make-up. His make-up business has been on the increase. In the last several years on both a pairage and a dollar basis it is better than 50 percent of his total business. That includes boots and utility shoes and all types and size ranges of shoes they manufacture. [fol. 231] Regarding the three general classifications of shoes named by the witness: boots, utility, dress and young

men's, and what part of the total pairage the boot business represents, the witness would say this. If it were not for the boot business which we went into about five years ago and on which we have pioneered in certain directions, in certain types, our sales to the independent retailers would be considerably less. To be specific, it has gone from nothing to perhaps 15 percent of their pairage. That would apply more to retail than to make up.

The utility type shoes would be perhaps 50 percent of the total pairage. The spread of utility shoes sales between wholesale and retail is the same as the proportion of sales that are wholesale to retail. Boots and utility shoes would account for 65 percent of his total pairage. The rest of the pairage is distributed on what he calls dress and young men's. That would be 35 percent of the total pairage. More dress and young men's shoes are sold proportionately to their independent accounts than to their wholesale accounts.

The general types of their make-up shoes, other than utility which is about 50 percent of the wholesale shoes, are distributed among the three other classes: dress, young men's and boots. Boots are on retail for the most part, but they do sell boots to wholesale accounts. And they sell the other classifications of shoes to their make-up accounts too. It varies between the years. It might be more one year on the make-up side than on the retail side, but the general trend in their business of sales to the independent retailer is downward, and percentage-wise, the disparity is even greater. And their sales on the make-up basis are increasing. Over-all, their business in the last five years has increased, on a growth basis.

As to whether young men's shoes are dress shoes, the witness said young men consider them so. He classifies them separately. He refers to dress shoes as staple shoes, custom, a more conservative shoe. A young man's shoe might have a lot of gingerbread, buckles, ornamentation.

His Company did not have a national advertising program for its shoes. They have it in certain types, such [fol. 232] as some of their boots. They have been talking about it in the dress or young men's shoes, but they don't have a national advertising program. The witness would say from his experience in the marketing of shoes, that

brand name identity of a shoe is of significant importance to a shoe retailer. Brand name identity on shoes has the effect of preselling that shoe to the public, and from that standpoint it would be desirable. That is one of the factors that a retailer of shoes must take into consideration in the types of shoes he buys.

The witness would agree with the general proposition that the manufacture and merchandising of shoes is quite a competitive business these days. There are many in the shoe business all trying to reach practically the same market. When his salesmen call on a customer in the course of their work, they do not always sell that customer their line of shoes. If the salesman considers him a prospect after the first few calls, he continues to call on him. It is possible that he may call on him and never sell him shoes.

His Company has 800 to 1000 retail accounts throughout the territory in which they market their shoes. He has made no determination as to how many shoe outlets there may be in the territory in which they market their shoes. The number of retail outlets his company sells may be 1200, but it is not 2000. There are less retail accounts today than they had at one time. They get new accounts from time to time, and they lose accounts from time to time. That is a normal turn over that goes on in the shoe business. The accounts that they may lose, it is due to the fact that some manufacturer of shoes has gone into that particular retailer's store. Sometimes when they get a new account, their shoes replace another manufacturer's shoes. Of course, new accounts are opened in various ways. People do open a store, and a new account isn't always taking an account away from someone.

The witness is acquainted with a store in Chisholm, Minnesota by the name of Randy's. It was quite a good customer of theirs in the early '50's, or thereabouts. He believes their line of shoes was replaced in that store by Brown. He didn't call personally. His salesman at the [fol. 233] time was William Kaylor, and he told the witness that there was a plan in effect, and he thinks Kaylor said the Brown plan. He is sure the salesman told him there was such a Brown Plan in effect at that time. The witness believes that was his reason for having failed to keep their line of shoes in the store. The witness inquires

of his salesmen why they lose the accounts, and they try to furnish the reasons. They try to find another account in the area. The Lindman store in Milwaukee was not a customer of their company. He was a prospect. He believes they did sell some boots to Lindman in 1958 and 1959. He is going by memory. The witness would not be able to affirm or deny whether the Lindman store has Lazy-Bones and Clinic shoes. He has not been in that store for many years.

As to the number of shoe stores in Milwaukee in the same classification and the same type of shoes that his Company makes, the witness would say there are several hundred. He would not be in a position to say. He would say they have about 20 to 25 outlets in Milwaukee, which is down from 30-40, in metropolitan Milwaukee. He would say several hundred stores. He wouldn't be in a position to say the number. There are several hundred in their price classification.

When the witness markets his shoes, he does not try to put his shoes in every store in a town of 35,000 population. In that size town they might try to get their shoes in perhaps two stores, and naturally, they try to sell the best or the better ones. In relation to a town of 35,000 population he said they would have perhaps 20 to 25 outlets, not necessarily in his price grade. He would then try to put his shoes in 2 outlets, but remember when you bring it down to his types of shoes and price, that would not be 25.

In regard to the shopping center trend that has been going on and the effect that it has had on the retailing of shoes, what the witness calls the traditional type of shoe stores means being on the main street in the commercial shopping area of the city or town. Wisconsin Avenue here in Milwaukee is an example. That is what he would call a traditional type of shopping area. The witness [fol. 234] knows a shoe store called Charles Strauss Shoe Store on that street. He does not sell any of his shoes to that store. He doesn't know whether it is on a plan. The witness has found the trend he mentioned in shopping areas to be a factor throughout his sales territory as far as affecting the retailing of shoes.

The customers to whom the witness sells his make-up

shoes have outlets in shopping centers. So that his make-up operation is supplying shoes in this growing area of shopping center merchandising. He wants to make one distinction. The people he is selling to there are independents, they are chain stores, chain retail stores in and by themselves. J. C. Penney Company is. To his knowledge they have no manufacturing facilities. To his knowledge Montgomery Ward has no manufacturing facilities. But those are the kind he is selling his make-up shoes, and they were, or are marketing those in shopping centers.

Some years back his Company sold some shoes to a shoe store by the name of Colbert in Chippewa Falls or Marshfield. They haven't recently. As to whether the reason for their not being able to sell them any shoes is because the Colbert store is on a plan, the witness is not in a position to answer that affirmatively or negatively, because he doesn't recall.

The capacity of his Company's plant for production of shoes per day is 1200 to 1500 pairs. They work one shift. They do not stock make-up shoes. They manufacture those pursuant to order. The shoes that they market under their own name are all in stock. The salesmen sell them in advance, but those shoes are consolidated and come through stock records. And then they manufacture based on orders that come in.

His Company furnishes display material or signs to retailers that they have as customers for their brand lines. Window cards and mats.

. . . . .

[fol. 235] It may be that in the last few years there has been a downward trend generally in men's shoes, as far as their production and sales in the country as a whole are concerned. However, his Company's total pairage over-all hasn't necessarily gone down. There has been some falling off on a per capita basis of the production of men's shoes in the United States. That is a trend in the industry. An industry trend of that nature has an effect on his business too.

There is a boot that is manufactured by the Acme Boot Company. That is a competitor. The boots of Acme do not replace the boots manufactured by his Company if they can help it. They consider themselves very competitive

[fol. 236] where Acme is concerned. And sometimes it could be the Acme Boot replaces their boot in a retail store. The witness said we strive against it, and if you are talking about boy's boots, we don't have them, but they have gotten into other boots like we manufacture and we consider ourselves competitive. The witness recalls they made a sale of boots to Lindman's store in 1957 or 1958, thereabouts. It is only a recollection through, and he believes it was boots. It could be that the Acme boot replaced their boot in the Lindman's store.

The witness mentioned Montgomery Ward, J. C. Penney and Sears Roebuck has a type of account included among their make-up customers. It does not necessarily include them specifically. It does not include Sears Roebuck. It does not even include Montgomery Ward. It does include J. C. Penney. Those are the type of accounts going into shopping centers throughout the country. You find those in the new developments.

The witness would not be in a position to say whether his salesmen have tried to sell their brand of shoes to the Colbert store in Marshfield or Chippewa Falls in the last five years, because he does not have the benefit of his salesmen's daily reports or letters. His Company's line of shoes in the young men's and boys' categories competes with a number of other nationally advertised brands besides the Brown Shoe Company.

#### Redirect examination.

The witness believes that the per capita consumption of men's shoes has been down slightly in the last ten years. He said that he was going by memory, according to the National Shoe Manufacturers figures. He doesn't believe total production pairage would be down. He doesn't know of his own knowledge.

Included in the term utility shoes, as used by the witness, are shoes that people would wear for work, you might call it semi-dress, where they would perhaps wear a uniform, or where appearance might be a factor. The type of shoes they manufacture you wouldn't necessarily wear on the farm riding a tractor, or digging a ditch. Their utility [fol. 237] shoes are dressy and are lined. At this time Commission's Exhibit 140 was marked for identification,



offered and then withdrawn. The dress and utility classifications overlap somewhat but not very greatly. Sixty-five percent of their volume is in utility shoes.

\*     \*     \*     \*     \*     \*     \*

As to the hypothetical town of 35,000 population, which the witness stated would have 25 or 30 shoe outlets, not all of the outlets would be in his Company's price classification. When you eliminate the exclusive ladies' stores and ladies' departments in department stores, perhaps juvenile stores, conceivably high-priced men's shoe stores, it might get down to five to seven shoe outlets would be in their grades.

Q. Does it occur in towns of this size that one or more of the available outlets is on a so-called plan?

A. Yes.

Q. What effect, if any, does that have on your prospects for gaining an outlet in that town?

Mr. Burke: It seems to me that is somewhat speculative. We don't know where we are. It is hypothecating an imaginary situation, as far as this line of questioning is going. It is also repetitious. It doesn't show that it happens, or where.

Hearing Examiner Creel: I will overrule the objection, and see how far it will go.

The witness said if there is a retailer or two or three on some sort of Plan, that naturally diminishes the number of prospects in such a city, and they very often are the most desirable from a volume as well as a credit standpoint. From his experience, the Plan merchants—partic- [fol. 238] ularly the Brown Plan merchants—are the more desirable type of store in their particular locality.

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WILLIAM EDWARD FREEMAN, called as a witness for the Commission, testified as follows:

Direct examination.

The witness was subpoenaed to appear here today. He is the President and Treasurer of Freeman Shoe Corporation, Beloit, Wisconsin. He has held those positions for five

years. Prior to that time he was a salesman for the Company, and most recently before becoming President he was in the merchandising department of the Company. He was in sales from 1948 to 1951. The territory he covered was the State of Indiana, plus the southern corner of Ohio, Dayton down through Cincinnati. His duties in his merchandising capacity were the coordination, or trying to harmonize, the pairage on hand in the warehouse and anticipated orders on the Freeman production line. The title of the position was Merchandise Director.

The duties of the witness at the present time as President and Treasurer of the Freeman Shoe Corporation are coordinating to the best of his ability the various departments of their company, namely production, sales and accounting; and also, to develop the necessary management people to head up those departments; to be primarily responsible for the cash flow in the business; responsible for reporting to the Board of Directors on the operation of the Company.

As to what contacts and duties the witness has with respect to his sales department, he said we have a vice-president in charge of sales who is directly responsible to me. He has under him thirty-two salesmen selling the Freeman product line to independent retailers throughout the country. My association is first of all as a business associate of Mr. Tobey, who is the Vice President in charge of sales, in discussion of policy, results of operations, and [fol. 239] so forth; but furthermore, I consider it one of my responsibilities to appear at the various sales meetings held under the direction of the Vice President in charge of sales, to meet with the salesmen in the territory from time to time, and also participate in certain national and regional shoe shows.

He feels that he has kept abreast of the selling problems of his company on the selling situation in the market in which their shoes are offered. He has had experience or contacts in the shoe industry outside of his Company. For a period of two years ending October, 1959, he was a Director of the National Shoe Manufacturers Association. He is a Trustee of the National Shoe Institute, which is a combination of the national shoe manufacturers and the national shoe retailers, and the two other trade associa-

tions that are jointly trying to promote the sale of shoes through advertising and strong promotion. He is a member of the Men's Style Committee of the National Shoe Retailers Association, which meets twice a year to discuss trends and so forth.

Freeman manufacturers men's fine dress shoes in addition to a fine line of men's dress casual shoes. The line consists of approximately three hundred styles in a price range at retail from \$11.95 to \$25.95. The witness is familiar with shoes offered in the United States which are competitive with the Freeman line of shoes. As to shoes offered and sold by the Brown Shoe Company which are competitive with his brand, the Roblee line of men's dress shoe is competitive to a very high degree, and in the lower price lines of Freeman it competes with the Pedwin division of Brown.

His Company has sales coverage throughout the entire United States. They sell principally to independent retailers, whether family shoe store types, men's shoe stores, men's clothing stores, or department stores. They also operate some of their own leased departments in men's clothing stores throughout the country. There are approximately 160 of these staffed with Freeman's own personnel.

As to how many retail shoe customers his Company has, referring to independent merchants other than factory [fol. 240] controlled, the witness said when you consider an account, I would have to take into consideration what we would consider the minimum amount of pairage to be considered an account. From that angle, minimum pairage being 100 pairs a year, I would say roughly 3300. Customers under 100 pairs could be prospects, or mail order accounts, but his Company doesn't like to classify them as an account because they are not that active, because the type of lines in the store or the smallness of the operation.

Last year about 83 percent of the total sales of his Company, by pairs, were with the independent retailer. The total sales volume of his Company last year, 1959, was \$20 million. Last year they shipped just slightly under two million pairs of shoes. This is about the same pairage sold or shipped ten years ago. Dollar sales are up

because of the inflationary trend in the industry. But comparing the two periods, the pairage would be about constant.

The terms of sale extended by Freeman to retail customers are 2 percent 20, net 45. That is uniform throughout the country.

The witness is familiar with the term Brown Franchise Store. To him the term means an association between the Brown Shoe Company and an independent retailer, whereby Brown provides to that independent retailer aids in merchandising, promotion, record keeping, window displays, legal and insurance aids, in return for the retailer purchasing from Brown a substantial portion of his shoe needs. The witness acquired this knowledge principally from three sources: One, the first occasion he had, was when he traveled in the State of Indiana, in talking with shoe men and dealers, and acquiring information along those lines. As to whether the witness remembered any specific dealers he may have talked to, he would have to rely on his memory, because this goes back to 1948.

Mr. Burke: This answer, in response to the question is apparently calling for hearsay testimony, and is entirely improper. I object.

[fol. 241] Hearing Examiner Creel: Well, I don't think so. Of course, I would not rely on Mr. Freeman's understanding of the plan as a basis for finding as to what the plan is. But his understanding of it may be important, and for that reason I overrule your objection.

The witness first became a salesman in 1948, and at that time he was carrying the fall product line of Freeman. After being in the territory a few weeks, he happened to get down around Columbus, Indiana, and noticed according to the record he had with him, that his Company had been previously selling the Cook Shoe Store. He made arrangements to visit with Mr. Cook and show him the Freeman fall products line. During their meeting, Mr. Cook said to him, "Bill, as much as I like the Freeman product line, my hands are tied, because I have just gone on the Brown Franchise Plan," which is what he called it. The witness noticed that Mr. Cook was remodeling his store and putting in new front windows that had the Brown image, as he had seen it advertised, with Buster Brown and other—

Mr. Burke: Just for the record, I want the answer stricken, as founded on hearsay.

Hearing Examiner Creel: The motion is denied.

This was his first personal encounter with the plan. He knew nothing of the plan even being in existence before that time. There was another Brown Franchise dealer in that area that the witness contacted, the Lanham Shoe Store in Huntington, Indiana, and he became increasingly aware of the Brown Franchise Plan, or Brown-Bilt Plan being in operation. You could almost spot the stores as you came into a community. After being turned down by quite a few, after they told him they had no need of Freeman products, the witness became aware there was more meaning there than there was spoken of to him. As an individual salesman he was never successful in selling to what he recognized as a Brown store.

The witness corrected his previous testimony that his Company had started in business in 1929 and said that he meant 1921.

[fol. 242] He was asked whether he had examined his files of records or made any attempt to find out whether his Company is now selling Brown Franchise Stores since becoming President. He said about two years ago we did become quite concerned about what we thought to be a diminishing market through the activity of the Brown Shoe Company and their association with independent retailers, and we did go back in our Cardex file, which is our individual account record, and since that time we have developed information, indicating to us that because we felt an account had become associated with some company on a franchise plan, we had lost that particular account as far as pairage in the Freeman Shoe Corporation. We have kept our records fairly accurate since that time.

The procedure followed to acquire this knowledge usually started with a letter from the salesman in that particular territory, advising our sales manager that in visiting with that account he was advised that the account would no longer be able to purchase the Freeman product because of his being made an agent with some other manufacturer regarding a franchise plan. The witness discovered several instances where a store which had been a customer of theirs became a Brown Franchise dealer and

then ceased being a substantial customer of theirs. The witness was asked for the names of any of the stores he may have and their locations.

During the period of 1948 to 1951 when he traveled the State of Indiana, he sold a fine family shoe store in Shelbyville, Indiana, at that time known as the Hub Shoe, to two brothers. At the time he left in 1952, his company was shipping approximately 800 pairs a year to that shoe store. He was eventually told that they went on the Brown Plan sometime in the last few years, and out of curiosity he checked the card file. He noticed that the pairage during the last few years had dropped to practically nothing, and they have no replacement in that community, Shelbyville, Indiana.

As to whether his Company ever sold to Jo-Mar Shoe Store, the witness said that he didn't know of it personally but he did get some information about it. His Company did sell that store. He was asked what his investigation disclosed as to that store.

[fol. 243] Mr. Burke: I object. It is based on mere conversation. By the witness' own testimony, he does not know about it personally.

Hearing Examiner Creel: Well, it all depends on how he has learned about it.

How did you learn about it?

The information the witness has came from the sales records which he went into during the last few days in the interest of learning more about the Jo-Mar Store. It meant nothing to him before. As to whether he sold that account, the witness examined some notes he had with him and stated that the account was in LaSalle, Illinois. In that particular city they were selling an account by the name of Good Shoe Store, who sold out to Jo-Mar Shoes in 1958. They continued to sell Jo-Mar until such time as they went on the Brown-Bilt Plan. At that time the orders stopped coming from that account. They did ship them through 1959, and nothing since then. They have not sold them since the early part of 1959.

They normally sold to a Wells Shoe Store in Ferguson, Missouri. The earliest sales figure he has on that store is 10,352 pairs in 1954. They sold 243 in 1955; 297 in 1956; 291 in 1957; 24 pairs in 1958; and 85 pair in 1959.



Freeman sold to a store known as Juels in Brookings, South Dakota, originally under the name of Stratton Shoe Store. Again, the records go back to 1955. The pairage from 1955 to the present was: 1955, 552 pairs; 1956, 86 pairs; 1957, 57 pairs; 1958, 11 pairs; now there is a little change. That store was bought out in 1958 by Juels, at which time they increased pairage to 143 pairs; but in 1959, it went down to five pairs.

Based on his experience both in his Company, and his contacts in the industry and with the Associations, the witness stated there are observable trends in the shoe market today, and they are becoming increasingly alarmed. Trends toward the disappearance of independent shoe retailer merchants. As to what has give rise to that situation, the actual disappearance—the witness thinks he should break it into two parts: the disappearance through giving up his store through sale, merging with various of [fol. 244] the larger companies, thereby completely eliminating that merchant from the market. It could be sales to other retail chains or shoe manufacturers, but the prime emphasis being on the manufacturers. Now, the other area in which, although he doesn't disappear from the speak, in that he has given up much of his freedom of operation in such areas as purchasing, selling methods, and so forth, through becoming associated with one or the other of the larger manufacturers through a franchise plan or other type of arrangement.

The witness had occasion within the last few days to examine the list of retail stores identified in the record as Commission's Exhibits 23 and 24, and represented to him as a list of Brown Franchise Stores. After examining that list he discovered some of his Company's substantial customers included in that list, that he was making substantial sales, too. Asked if he recalled the names of some of them, he replied, well, the first one he mentioned, the Hub Shoe Stone in Shelbyville, Indiana.

Hearing Examiner Creel: Are you referring to those you are now selling to, or those you sold in the past

By Mr. Rogel:

Q. I mean those that are currently substantial customers of yours.

A. I saw none.

The list of stores very definitely represented a market in which he could prospectively make sales. He is attempting to make sales in there, all the time. His Company considers that a prime market, towns of that size, and the types of stores. He does not feel that he has a good chance of selling to those accounts, those specific stores on the list, as he does to any other 700 stores. As to whether the market composed of that list is considered to be a free market to which he has access, the witness said well, we have access to it, but we don't participate in it, for some reason or other. I feel very strongly that it is not available to us.

The Company's corporate offices and two manufacturing facilities are in Beloit. Then they have two in Dixon, Illinois, which is south of Beloit.

[fol. 245] As to what services his company renders to their customers, comparable to the services rendered by the Brown Franchise program to its franchisees, the witness said one service we do render, which I don't believe I covered in my description of the Brown arrangement, we do have a store planning service available to our dealers, through our own store planning division. That is not given to them free of charge. There is a charge for the expenses incurred on the job by our men. The only thing we do in the accounting field is make available to them, on a form developed for us by Remington Rand, a form which is quite useful in keeping a perpetual inventory control. Those forms are for sale from us. We make a charge for that.

His Company does not offer any type of insurance plan or sponsor any insurance plan. They do not have any field representatives who are solely assigned, not just to sales, but who are assigned to assist their retailers. As to whether they are able to offer their dealers discounts on equipment they need other than shoes, such as X-ray machines or things of that nature, the witness said, no, we have no arrangements on X-ray machines. As to other types of footwear, such as canvas and rubber footwear, he said we have entered into arrangements with no other companies manufacturing products for use by the independent retailer.

As to point of sales aids or sales assistance generally, each Freeman account with a shipment of a season's shoes

will receive price tickets, two or three window cards of varying sizes, a standard Freeman window identity sign, so to speak, ad mats for local newspaper advertising—those are furnished without charge—and that is about the extent.

He supposes the reason why they have not been more competitive with Brown in offering additional services, such as the type Brown may offer, is their philosophy of operation. Dealers need help but they don't think it should be done. It would be costly.

As to whether it would be economically feasible to perform all those services, considering they have only their men's line of shoes in the store, the witness said, in the [fol. 246] dollar volume of men's shoes in our types of stores, say in a typical family shoe store, it is approximately 20 per cent of the store's volume. Being exclusively a men's dress shoe manufacturer, there would be many questions as to the logic of our following such a pattern of providing services for the entire operation.

The Company's net profit as a percentage of total sales after taxes in the year 1959 was 1.9 per cent.

#### Cross-examination.

Freeman does national advertising of their shoes. Compared to their competition it is not too extensive. At the present time they are advertising in Sports Illustrated, Holiday, Esquire, and Ebony. One of the purposes of a national advertising program such as they have is to establish recognition of the Freeman brand, and to help pre-sell. In other words, the theory of an advertising program of this nature is to pre-sell a brand by establishing identity in the minds of potential customers. The witness feels that a brand name, when it is a nationally advertised brand name, has a sales feature that a non-advertised brand would not have.

The shoe line his Company sells is a fine line of men's dress and casual shoes. It has a price range of \$11.95 to \$25.95. The Roblee brand of Brown Shoe Company, competes with those. Other competitors of Freeman Shoes in that price bracket are: Jarman Division of General Shoe, Nunn-Bush, the Bostonian and Mansfield brands, Wintthrop Division of International, Crosby Square Division of the

Shoe Corporation of America, and Weinberg Shoe Company. That pretty well covers it. He does not know of a Wall Streeter brand made by the Wall Shoe Company in Massachusetts. The various brands that he has just named, or the manufacturers of those brands, together with Roblee, are all competing for the same customers' markets that the Freeman Shoe Company are competing for.

It is not true that when an average type of family shoe store stocks a line of shoes, whether it is Freeman or some one of their competitors, that shoe merchant is not likely [fol. 247] to go out and also stock another competing line. The average shoe store of the type they are discussing today, in the experience of the witness, has two or more lines of men's dress shoes.

Q. Well, is that the way—do your salesmen encourage a store to stock your shoes and another competing brand? Is that part of your sales policy?

A. Not unless they are non-competitive.

Q. In other words, so long as it is a competing line in price and style, it would be advocated by your salesman that the store concentrate on one line?

A. If that line meets all his needs.

Q. From the standpoint of the retail merchant, that, you feel is good business for him, as well as good business for you?

A. In most instances.

The leased departments owned by his Company are primarily in men's clothing stores, with a few in department stores. In the figure that the witness gave, there are about six men's shoe stores. The brands of shoes that those have are Freeman, and they do carry others. Possibly price-wise the others are competing, but they give a little better style coverage. One line is Edwin Clapp. Considering shoe stores and leased departments together, they do carry other shoes: Stetson, Stacy Adams shoes, Crosby Square, Edwin Clapp. That about covers it. The price range of the Clapp shoes will start in the low 20's, \$22.00, \$23.00. They go higher than Freeman shoes. Stacy Adams would be in that price range too. The witness does not regard those as competing with the bulk of the Freeman line, but there is an overlap. There is a normal growth pattern in

their acquisition of these departments in recent years. No distinct increase in any particular period. In the last ten years they have increased the number of their own departments about ten percent.

The sale of men's fine dress shoes has remained rather constant in recent years. That was the nature of his testimony when he said his sales in 1959 on a pairage basis were about the same as ten years before. He couldn't answer whether his company's experience in being able to maintain a level of sales of that nature was common in the industry as to those manufacturers making men's [fol. 248] shoes. He didn't know their experience. He has not followed the trend of the pairages sold by their manufacturers in the men's shoe line because that information is pretty well lost in the statistics of the entire country's report. It doesn't spell that out. His activities with the National Shoe Manufacturers Association doesn't delve into any such information.

His company did have a pairage increase in 1959 over 1958. His company's \$20 million of sales in 1959 is the highest in the company's experience, dollar-wise.

His company does not have a make-up division in the true sense of the word. The few shoes they make up other than the Freeman regular line stock, would be less than one percent.

As to whether the witness testified on direct examination that his company was foreclosed from selling the franchise stores that counsel for the Commission showed him, the witness said our experience has indicated that the amount of effort spent on those stores generally rates little return on the efforts. Their Freeman brand is competing against the Roblee brand in those instances.

The witness knows of only one franchise store that carries their brand. It was just called to his attention last weekend as he happened to come through Syracuse, New York. He thinks it is the Ames Shoe Store in Syracuse. They do carry Freeman shoes in that store. He understands that it is a Brown-Bilt Plan. To his knowledge that is the only one.

The witness knows the McCoy Shoe store in Beloit. That store is on the franchise plan. As to whether they carry Freeman to the exclusion of Roblee, the witness doesn't

know about the exclusion. He doesn't know whether they have any Roblee shoes in the store. They do carry Freeman shoes to his knowledge. It is the witnesses' understanding that it is a Brown Franchise Store.

The study the witness made of his files regarding stores on the Brown Franchise Program that either were or are customers of his company was not a complete examination, but a rather cursory one. The witness has heard the name of Dutcher's in Altus, Oklahoma. He doesn't know if it [fol. 249] is on the Franchise Program. He knows at one time they did carry Brown shoes. The witness is not familiar with Hub Bootery in Miami, Oklahoma. He is not familiar with Bareis Store in Rochester, New York, other than the fact that he knows his distribution in Rochester, New York is not very good. That store carries Freeman shoes. To his knowledge that store is on the Franchise Program. The witness doesn't know the Peters Shoe Store in Glendale, California. He doesn't know if they carry the Freeman line. As to the Holiday in Anderson and Cleburne, Texas, the witness stated they do have an account there, but he doesn't know the name. When told the former name was Elwin, he stated that they did sell shoes in Cleburne. Maybe that is the account. As to whether Leo's Shoes in DeKalb, Illinois carries Freeman's shoes, the witness knows that their Illinois salesman mentioned a short time ago that they have no distribution in DeKalb, Illinois. That is one of the open towns where he must find an account.

The Masters Shoe store in Struthers, Ohio, he has heard of but can't say for sure whether it is on the program. He doesn't know whether they carry Freeman shoes. There is another Masters in Youngstown, Ohio. He is not sure about Struthers, but they did in Youngstown. He is not sure as to whether both were on the franchise program.

As to whether the witness was familiar with a store in Wapakoneta, Ohio, called Abbott's Shoes, he said that he might have information that was on the Brown plan. They did buy Freeman shoes. (The witness examines some papers.) According to information he has here, which goes back to 1956, they have bought them through 1959, with no orders for 1960. Because of no activity for 1960 it would indicate that the salesman, between October 15 of last fall and February 15 of this year, did not receive an order.



Wapakoneta had been a customer of Freemans. The salesman did not receive an order for the spring of 1960, for some reason or other.

Kerrs Shoes is their account in Monroe, Wisconsin. He doesn't know whether or not it is on the franchise program. They are a customer of Freeman. The witness [fol. 250] doesn't know whether or not the Freeman shoes replaced Roblee in the Kerrs Store. He has no information about that.

Q. But there are then franchise stores that do carry Freeman shoes?

A. It would appear so, from the information you have given me.

The witness agreed that the general philosophy of a retailer, is to have the type of shoes that are the easiest to sell and that please the customers if they generate the profit requirements. If a retailer has the type of shoe that meets his requirements in that respect, it is difficult at times to get him to change brands. As to whether there is quite a sales resistance by reason of the store owner's preference for one brand over another, the witness stated that preference, of course, would have to be based on profitable performance, the maintaining of standard turn-over on the merchandise and so forth. If he achieves his goals in that respect in his store operation, whether he will completely change to another brand depends on the size of the operation.

If it is an operation of the size that can only handle one line of men's shoes and he is getting all the satisfaction from the one line of men's shoes, the witness could not recommend that he change. These are some of the problems a salesman has in trying to introduce a new line in a man's store who already has a line with which he has satisfactory results.

In the course of marketing Freeman shoes, the witness has had the experience that other manufacturers have of getting new accounts and losing accounts. There is a turn-over in accounts. He said we lose accounts because they are lost to another manufacturer, they go out of business, or they become a part of a merchandising plan, such as the Brown-Bilt Plan.

His company does not necessarily have a sales policy that it follows as a rule of thumb of having an outlet or a number of outlets limited by the size of the community. That will often times depend on the type of community. Some towns are such that you can possibly sell a shoe store and a clothing store, or a shoe store and a department store, if there is an interest and a willingness on the part of both those retailers, and they can properly merchandise the lines in that area. This has happened in towns of 50,000. It would be a fair sized community. In a smaller area you would normally have one outlet.

The witness was asked whether the cities where the Brown Franchise stores are located, that he indicated on direct examination represented a market not available to Freeman, are the only stores in those communities that sell shoes. He said it could be in some instances, depending on the population of the town involved. One instance where a Brown Franchise store is located in the community and is the only store in that community is Dunkirk, Indiana. He doesn't know if it is on the list. It was at one time. It is the only shoe store in town. The year would be 1948 or 1949. Without checking a map, the witness would say the nearest town to Dunkirk is 15 to 20 miles. That town would be larger than Dunkirk and that town does have shoe stores.

When the witness used the term "Freeman Dealer" on direct examination, he was referring to an independent retailer customer of Freeman that carries their line of shoes. One of the criteria in considering whether an account was worth counting in the number of 3300 accounts was whether they had brought 100 as a minimum. Any dealer who uses Freeman shoes is considered an account, but this was a breaking of classification for this purpose. So far as total accounts or customers of all sizes, it is substantially more. It is about another 25 percent more. The witness would consider the Dun & Bradstreet report of 6,000 accounts as too high.

The figure of course is constantly changing. It is in the area of 4400.

The services made available by his company to Freeman dealers are for the purpose of helping them in their business, helping them to promote the product. Dealers need help and this was part of their program of helping them

without discriminating. Outdoor signs are available to dealers. They are made available to every one of Freeman accounts. There is a fee. He is not in a position to say [fol. 252] just what it is, whether the signs remain in the possession of Freeman and the dealer rents it or buys it. He doesn't know of any distinction made as to the size of the account in furnishing these signs.

The company has a Display Division. The service is available to merchants, but the Display Division was started originally to provide fixture service, window aids, and so forth for the Freedman leased departments. The various display materials are made available to the Freeman dealers also. The man in charge of the Display Division is also in charge or has been in charge of store planning. When he talks about store planning it is a pseudo architectural type of service. It is not a registered architect. If the merchant called in and a man is available, and he has a problem in expanding the shoe department, the Freeman service is available to give him counsel for that. The service is available to all who feel the need of it.

The witness does not have any idea how many shoe stores there are in Milwaukee. His company has 10 to 15 accounts in the city of Milwaukee. Those accounts are in varying degrees; some carry more of the Freeman line than others.

The Freeman line of shoes ranges from a retail price of \$11.95 up to as high as \$25.95.

The Freeman Company, either through salesmen or any other field representatives, does not furnish sales counseling service to its retail customers. If the salesmen do any of that kind of work it is not under the direction of the company.

[fol. 253] Redirect examination

. . . . .

There is a charge to the independent retailer concerning the display materials the Freeman Display Division designs.

The store in Beloit presently known as McCoy's was previously Merklands, which had been in Beloit for 40 or 50 years under that ownership, and had become a very substantial user of Freeman products, and down through

the years had developed great acceptance of Freeman in that particular store. When the store was sold by Merklands family to the McCoy's of Centralia, Illinois, they felt it would be to their advantage to continue with the Freeman shoes. The fact that this is the home office of Freeman possibly could have something to do with it, but Freeman could not sell the McCoy's in other cities, and they have 4 or 5 others in cities where Freeman does not have representation.

His company has three brand names under which they market their shoes; in the higher price line, the Bootmaker Guild, the popular price is Freeman, and the line of men's dress casual is Town Squire. The name Freeman will appear on all the shoes.

#### Recross-examination.

The witness said he could not answer whether the owner of the McCoy store in Beloit only owns one other store, and that is in Centralia, Illinois. There are other McCoy Stores through Central Illinois. It could be just a similar name. It is the same spelling. The witness cannot make the statement that all the McCoy stores are owned by the same person. He would amend his previous statement that McCoy's had 4 or 5 other stores. He cannot say definitely that they are all under the same ownership, although the [fol. 254] one in Beloit operates a store in Centralia. That is the only one under the same ownership to his knowledge.

Hearing Examiner Creel: I have one inquiry to make. As I understood your answer to a question on direct, you said you had been over this list of Brown Franchise Stores and found only one or two to whom you sold any substantial amount?

The Witness: No; to whom we were selling at the present time.

Hearing Examiner Creel: Then Mr. Burke inquired about several different stores by name, and you said you were selling to some of those at the present time, did you not?

The Witness: Yes, there were some.

Hearing Examiner Creel: And what I don't know, in making a comparison of the exhibits, is whether the stores he inquired about were on the list?

The Witness: Mr. Burke inquired about Kerrs, customers

in Monroe, which, to my knowledge are not on the list I saw; nor was the store in Wapakoneta, Ohio. It is not on the list, sir.

Hearing Examiner Creel: I see.

The Witness: But he had evidence our store sales dropped off.

Mr. Burke: I believe, your Honor, for clarification, Kerrs Shoes at Monroe is in that list that was examined by Mr. Freeman. It is in the Commission's Exhibit, as is Masters Shoes at Youngstown, Masters Shoes of Struthers; Holiday Anderson; Peters Shoe Store, Glendale; Bauers; the Hub Bootery in Miami, Oklahoma; Dutchers Shoe Store, and McCoy's in Beloit. I believe that store located in Wapakoneta is not, is not on the list.

Hearing Examiner Creel: Is not on the list?

Mr. Burke: No. It is a new store.

Mr. Rogel: His testimony, as I understand it, is there were only two or three of the stores you mentioned that he was selling to.

Mr. Burke: And we interrogated him also in regard to a group of stores that were also Freeman customers?

[fol. 255] Mr. Rogel: Of course, the record will indicate.

At this time Commission's Exhibit 141-A through 141-T, a several page tabulation headed "Stores on Brown Franchise Program as of January 1, 1960 Indicating Those Stores Which Joined the Program After January 1, 1955," was marked for identification. Commission's Exhibit 141-A through 141-T was received in evidence without objection, but with the condition that any check marks or penciled or penned marks which appear thereon are to be disregarded.

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May 5, 1960

RAYMOND S. SHANNON, called as a witness for the Commission, testified as follows:

Direct examination.

The witness was subpoenaed to appear here. He is presently the Vice-President in charge of sales of the Weyenberg Shoe Manufacturing Company, 234 Reservoir Ave-

nue, Milwaukee. In addition to their Reservoir Avenue facilities, the company has two factories at Beaver Dam, Wisconsin and Portage, and an office at Portland, Oregon.

As Vice-President in charge of sales, the witness supervises the sales of the organization. He has held that position about a year. Prior to that he was credit manager of Weyenberg. As credit manager his duties were to supervise and control the credits of the organization, and close coordination with selling. He passed on credit. Their organization is small, where your duties are coordinated. He had daily contact with the sales department.

The present Executive Vice President had preceded the witness as credit manager and whenever he went into the selling end of the organization, there was always a very close tie-up between the credit and selling in their organization. The witness had direct contact with the [fol. 256] salesmen when he was credit manager. When salesmen came into the office, and when they had meetings, quite often he was at the meetings. He supervised credits and many times on a new account he would call or write letters to try to bring about better results. He was in that position in the credit department since 1921.

The witness has never been affiliated with other shoe companies. The Weyenberg Company has been in business approximately 55 years. It is a Wisconsin corporation. The officers are: Mr. Weyenberg, President and Treasurer, Mr. R. J. Dempsey, Executive Vice-President, Mr. K. Nickel, Secretary. The witness is Vice-President in charge of selling. The company has selling divisions in their own organization—Portage Shoe Manufacturing Company, and the Great Western Shoe Company. They are not separately incorporated, they are selling divisions of Weyenberg. Their selling would be under his supervision. His company manufactures dress shoes and a small number of work shoes. The dress shoes would fall in a retail range of \$10.95 to \$21.95.

The brand names that they manufacture are: under the Weyenberg Division, Massagic; next would be the 4000 series, their Com-Flex line. That is the trade name. And they have an Aristocrat line, and their Olympic line. Then under the name of Portage they have Port-O-Peds, Comforted, Boulevard and Monarch. Portage is one of their



selling divisions, the Portage Shoe Manufacturing Company. That name would appear on the trade names he referred to. The company has a branch located in Portland, Oregon. It is financially complete. They ship shoes in carload lots or truckloads and distribute them. They are sold and distributed from Portland, in Oregon, Washington, California, down through San Francisco. That is the only operation of that kind.

At this time Commission's Exhibit No. 142, a tabulation entitled "Report of Sales in Terms of Dollars and Pairs Manufactured by Classes for the years 1948 through 1959," was marked for identification. The witness was shown Commission's Exhibit No. 142 for identification. It was prepared by their Secretary, Mr. Nickels. The figures were taken from their records. The Exhibit shows [fol. 257] the years from 1948 up through and including 1959, net dollar amount of sales; next is unit men's dress shoes; next, unit men's work shoes; children's shoes; and in 1951 we have the net Army shoes, 143,000. Those are the total figures for his company's operation. Commission's Exhibit No. 142 was received in evidence without objection.

His company sells their shoes to department stores, family shoe stores, exclusive shoe stores and clothing stores. They may sell a few shoes in the make-up division to jobbers, although that is a very small amount, if any. About 15 percent of their total output of shoes is make-up. That would be what they term their Great Western Division. He has supervision over that division as far as sales are concerned. All sales of the entire organization are under his direct supervision.

He has 55 salesmen which cover the entire United States. They are paid on a commission basis. They may have four men that start in new territories and they may pay them a drawing account until they develop their business, but otherwise their's is strictly a commission basis, no salaries. The company doesn't pay expenses. The company may withhold taxes, but they pay their own expenses. The company pays commissions at the end of each month.

Approximately 4500 retail customers are currently actively buying from his company. Terms of sale are according to the territory. In the State of Wisconsin and states

touching Wisconsin 2 percent, 30 days. The next states, 2 percent, 45 days. And in New England states, two percent, 60 days. Their service shoes are net. The reason for the varying time is because of the distance. Merchants that are removed from Milwaukee, it takes longer, possibly, for shoes to get there, say to California, than to Wisconsin, or to Illinois.

They do some national advertising on their shoes. That consists of advertising in national publications, such as Esquire, Time, True, Argosy and Life. The witness feels that shoes of their brand have good acceptance in the United States.

[fol. 258] The witness is familiar with the brands of shoes which constitutes his major competition in the country. Shoes in that category manufactured by Brown would be the Roblee line and the Pedwin line. He is familiar with the term Brown Franchise Store. It means to him a restrictive arrangement with the retailer, which provides that he is confining his purchases to the two Brown products, excluding conflicting or competitive lines. He acquired that information over a period of years from contact with salesmen and contact with other merchants.

As to whether he has conducted a study of this Brown Franchise Program as it may affect his business, the witness said we are quite constantly exposed to what salesmen may tell us about competition which they encounter on controlled stores or franchise outlets. And you don't particularly make a systematic study of it. It represents a certain futility to do so. You accept it. It is one of the things with which you are confronted. You just have to live with it, or try to live with it, and try to do your best. I think all controlled units, stores or departments controlled by manufacturers, or owned stores in department stores by manufacturers diminishes the opportunities of a manufacturer like the Weyenberg Shoe Manufacturing Company. His company has no controlled outlets, no factory owned stores or departments.

Q. Have you lost any actual business which you feel was due to the Brown Franchise Plan?

A. Well, we have letters from our salesmen and they tell about diminishing opportunities in their territories,

and we have had accounts that we have lost because of that fact.

Q. Because of their becoming Brown Franchise Stores?

A. Yes, we have.

Mr. Burke: I object to this line of inquiry. It calls for hearsay testimony, and it invites bringing into the record statements by people not on the witness stand. We have no way of cross-examining, and for all we know it is just a good excuse by the salesman as to why he is not peddling the shoes.

Hearing Examiner Creel: It is certainly true in this instance; but nevertheless, I am going to receive this kind of testimony.

[fol. 259] The Witness: I am not unmindful of the fact that in dealing with salesmen, some less conscientious salesmen do find excuses to justify their ineptitude at times.

Hearing Examiner Creel: If there are any particular accounts he is going to name that are not, in fact, Brown Franchise accounts, that can be readily established.

Mr. Burke: Part of my objection was founded on strictly hearsay; and the fact they are Brown Franchise accounts does not, in itself, provide an exception to the hearsay rule. After all, we cannot be bound by anything an independent retailer has to say.

Hearing Examiner Creel: I understand that; but the reason I consider this of some importance is that this will show certain accounts which presumably he lost at or about the same time they became Brown Franchise accounts. Now that doesn't prove the proposition that because they became a franchise account it was necessary that they give up the account. I did not mean that.

Mr. Burke: Because, after all, it is a decision of the retailer what kind of shoes he carries.

Hearing Examiner Creel: Perhaps my reason for admitting it will disclose that. You may proceed.

The witness' attention was called to Commission's Exhibit No. 141-M, a list of stores that went on the Brown Franchise Plan, and Emerlings located in Hamburg, New York, which is on the list, and according to the list, the store went on the Program on March 15, 1956. His company did sell to that store. At this time Commission's Exhibit No. 143 was marked for identification. The wit-

ness identified it as a photostatic copy of a record of Weyenberg shipments to Raymond J. Emerling, Hamburg, New York, from 1946 through 1959. It is a copy of a record which is kept in the ordinary course of business. The figures shown in the column marked Dollar Volume are in dollars. So the sales, such as 1,105 in 1959, 4,835 in 1953, and in 1946, 2,132, are dollar sales.

[fol. 260] The witness was asked to explain the various columns that appear, 1 through 6, on the exhibit. The first column would be what they call their 300 series, their Port-O-Peds, which is a feature shoe. They only sold three pairs. The next column, too, is a featured shoe with a sponge rubber piece between the inner and outer soles, Massagic. That price class presently starts from 18.95, \$19.95 to \$21.95. The top or the top half of Brown's Roblee would possibly be about in that classification. That may change a little bit. Most of their shoes in that classification are priced a little higher than 50 percent of the Hoblee line. Unit 3 on the card is the Aristocrat grade, around \$16.95, \$17.95: No. 4, that would be their lower grades, could be all the way from \$10.95 up to sixteen, or \$14.95. Column 6 is all work shoes.

The witness' attention was called to Commission's Exhibit No. 141, page Q, the Blynns Shoe Store, Inc., in Pittsburgh, Pennsylvania. That store became a Franchise Store February 27, 1959. They did sell to that store. At this time Commission's Exhibit 144, a copy of a ledger card for Blynn's Shoe Store, Inc., was marked for identification. It is a photostatic copy of one of the company's records kept in the ordinary course of business. Commission's Exhibit 143 and 144 were received in evidence without objection.

The witness' attention was called to Commission's Exhibit 141, page K, the name Gryder's Shoes, in Biloxi, Mississippi. It is his recollection that they sold to that store. He does not know whether the store is still located at 217 W. Howard Street, or if the store was formerly at 314 LaMeuse Street. He has a recollection of one of the stores being changed, but he does not know specifically if that was it. Commission's Exhibit 145, a ledger card for the Gryder's Shoe Company, was marked for identification. It is a copy of their records. The handwriting on the Exhibit was

pointed out to the witness, and he was asked what it was. It is not the witness' handwriting. He doesn't know what it says. Commission's Exhibit 145 was received in evidence without objection.

At this time Commission's Exhibit 146, a letter dated June 19, 1958, and Commission's Exhibit 146, a letter [fol. 261] dated April 22, 1960, were respectively marked for identification. The witness identified Commission's Exhibit 146 for identification as a letter that he sent to John Anderson, a Weyenberg salesman, who covers the State of Iowa, on June 19, 1958, concerning the Blinkinsop Shoe Store in Marengo, Iowa. The handwriting on the Exhibit is the writing of their salesman in response to the typewritten portion of the letter. This is the witness' letter to Mr. Anderson, and on the bottom is his reply. Commission's Exhibit No. 146 was offered into evidence.

Mr. Burke: I object to the offer of this exhibit. It is self-serving, and contains certain statements by somebody, a Mr. Anderson, whose handwriting is not the statement of this witness. We have no opportunity of cross-examining this individual, and I object to the offer of this exhibit.

Hearing Examiner Creel: Maybe I had better read it.

Mr. Rogel: Yes, sir, here it is. (Handing document to the Examiner.)

Hearing Examiner Creel: The objection is overruled. Commission's Exhibit No. 146 is received in evidence.

The witness described Commission's Exhibit No. 147 for identification as a letter he wrote to their salesman on April 22, 1960, and on the face of the letter is the reply from Mr. John W. Anderson, their Weyenberg salesman in Iowa. The red printed portion at the bottom is the historical record of their shipments to that store in Marengo, Iowa. It shows the shipments from 1953 to 1960, by grades and by dollars and cents. Commission's Exhibit No. 147 was offered into evidence.

Mr. Burke: I make the same objection to this letter, Commission's Exhibit 147; self-serving; hearsay. We have no opportunity of cross-examination as to the party writing that.

Hearing Examiner Creel: May I see that?

Mr. Rogel: Yes. (Handing document to the Examiner). [fol. 262] Hearing Examiner Creel: That objection is also

overruled, and Commission's Exhibit 147 is received in evidence.

Commission's Exhibit No. 146 indicates that they were shipping to this company from 1946 on. It is a record of work shoe shipments only, with the exception of about 16 or 17 pairs. The witness cannot recall whether his company was selling them dress shoes in 1946. He thinks there may be records at his office that go back to 1946. He will determine this during the noon hour.

At this time Commission's Exhibit 148, a letter on Weyenberg stationery dated April 22, 1960, was marked for identification. Commission's Exhibit 148 for identification was identified by the witness as a letter he sent to their salesman, and it was returned with a long-hand reply. It was sent to Harry A. Jones, who is the Weyenberg representative in Nebraska and South Dakota, concerning—his long-hand notation pertains to John Bauer of Beatrice, Nebraska. Commission's Exhibit 148 was offered in evidence.

Mr. Burke: I object to the offer of Commission Exhibit 148. It is hearsay; it is self-serving, and obviously, from the language used in it, it is not in the ordinary course of business. It very clearly appears that this seems to be a part of making evidence, that it might be used in a hearing such as this. It is clearly objectionable for what it shows on its face in that respect. It was not kept in the ordinary course of business. We have no opportunity to cross-examine the man whose handwriting appears on this document (Handing document to the Examiner for inspection).

Hearing Examiner Creel: I will sustain the objection to this document.

The witness was shown Commission's Exhibit 141-L and his attention was called to the store listed there as Bauer's in Beatrice, Nebraska, with the indication that it went on the Brown Program in January, 1956. As to whether his [fol. 263] company ever tried to sell that store, the witness would say, yes, on the basis of the letter received from their salesman. His salesman has reported to him that he had tried to sell that store. To the witness' knowledge they have never had any sales to that store. It is not an account at this time to his recollection. They have 4500



accounts on the books, and he would not know every one. He would have to check the records.

Commission's Exhibit 149, a letter dated May 2, 1960 signed by Ken Williams was marked for identification. The witness identified the document as a letter he received from their branch at Portland, Oregon from Ken Williams. Commission's Exhibit 149 for identification was offered in evidence.

Mr. Burke: I object to the offer of this exhibit. It is a statement by some party who is not present and available as a witness for cross-examination. The date of this document and the contents of it obviously indicates it was for the purpose of developing some kind of evidence for this case. If Mr. Williams, as the signer of this, was made available for cross-examination, that would be one thing; but to have a man unavailable, and making a self-serving statement of this nature which is not in the ordinary course of business of the Weyenberg Shoe Company is objectionable.

It has also just come to my attention, this Exhibit 147, by reason of its date and what appeared in Commission's Exhibit 148, that that actually has the same lack of validity from the evidentiary standpoint as 148. This is not in the ordinary course of business. It was purported to be, but on examination, it quite obviously a fishing expedition; there is no opportunity for cross-examination.

So I object to the offer of Commission's Exhibit 149 that is being offered, on those grounds; and I also move that Commission's Exhibit 147 be stricken.

Hearing Examiner Creel: Well, your motion with regard to Exhibit 147 is denied.

Let me read the other one. (Examining exhibit).

The objection is overruled. Commission's Exhibit No. 149 is received in evidence.

[fol. 264] As to the name Les Weigand on Commission's Exhibit 149, and the extent of his territory he covers the greater part of Washington and part of Montana. That would be eastern Washington. The salesman Paul Mehan covers all of Oregon. Sam Brown covers the northern part of California. Clark Penner covers the City of Portland Jim Clark covers part of Idaho and part of Washington too.

Hearing Examiner Creel: I might say to both of you gentlemen, that this last exhibit is hearsay twice removed, and I am going to be reluctant to base a finding on this type of evidence. The mere fact that I have admitted it is not to be taken in any such manner.

Mr. Rogel: The exhibit is corroborated by other evidence, your Honor. I am merely offering it to show customers of Weyenberg.

Hearing Examiner Creel: It may well be. I was just putting you on notice that I didn't think to much of the quality of the evidence.

Mr. Rogel: I understand that.

In the past week the witness had occasion to examine the list of Brown Franchise Stores which is in evidence as Commission's Exhibit 23 and 24. There were stores that he recognized. He considers them to be desirable types of retail outlets for their products. At one time they were making sales to some of the stores on the list. As to whether they were making sales to any of the stores on the list presently, it is his recollection that they were selling Roe's at Huntington, Brown and Roe. That is the only one he seems to recollect on the list. (A five minute recess was taken to enable the witness to examine the document). As to the stores the witness recollected from the list: Bishop Shoe Company is very familiar, in Pennsylvania, Bellevue. Gryder's at Gulfport, Mississippi, and Faflik in Cleveland. And the Beaver Bootery at Beaver Dam, Wisconsin. He didn't know if it was familiar.

This constituted all of the names he was familiar with, although he looked at the list rather hurriedly. His company is presently selling their shoes to the Beaver Boot-[fol. 265] ery. There are several Faflik stores in Cleveland, four or five. Whether they are selling the specific one on there he doesn't know, but they are selling to Faflik in Cleveland. He doesn't know if they are all under the same ownership.

Q. As the sales manager of your company, or as the Vice President in Charge of Sales, do you feel you have the same opportunity to sell to this list of Brown Franchise accounts as to other retail dealers?

Mr. Burke: I object to the question; it is argumentative.

Hearing Examiner Creel: It certainly calls for an opinion; I will overrule the objection.

By the Witness: A. No, I don't.

His answer is based on the restrictions under or imposed by the Brown Franchise on the accounts. They are precluded from buying conflicting lines. So Weyenberg salesmen, more or less, recognize that fact and sense the futility of contacting them.

As to why the total number of pairs of men's dress shoes sold by them in 1959 was less than total number of pairs sold in 1948, it is his belief that the expanding operations of manufacturers who own and operate their own stores and departments in controlled outlets contributes to diminishing opportunities for independents like themselves. By controlled outlets he means outlets like the Brown franchises, or factory controlled departments, whether it is wholly or generally or whatever it may be.

Q. You said diminishing opportunities. Do you feel that today there are a less number of available retailers, prospective customers, than there were ten years ago

Mr. Burke: I object to the form, what he feels about something. It calls for an opinion and conclusion. There is no foundation laid as to whether this man is qualified.

Hearing Examiner Creel: I will sustain this objection. [fol. 266] I do think he should be asked what he knows, and if he knows the facts. I don't know if he does or not.

Mr. Rogel: Your Honor, he is the sales manager of the company; and since 1921 he has been actively attempting to sell shoes and supervise salesmen. I can conceive of no person more qualified to describe the market conditions.

Hearing Examiner Creel: That may well be. You can ask him what he knows, not what he feels about it.

By Mr. Rogel:

Q. Mr. Shannon, in your opinion is there a diminishing number of prospective customers for your shoes than there was ten years ago?

Mr. Burke: Same objection, your Honor.

Hearing Examiner Creel: Well, I think it is subject to the same objection as the other question was. If he knows

he may tell us; but, on the other hand it seems to me it is something that is not capable of exact proof. I don't know whether anybody knows the exact number in any given year. So I will let you ask him for his estimate of the situation.

The Witness: Pardon me. As for factual information, I cannot answer, but I have to answer categorically.

Mr. Rogel: As you mention, I do not believe there is any set of figures on which we can rely to compare the number of independent shoe outlets not affiliated with retail chain or manufacturers with the same figure in 1948. Those figures, to my knowledge, are just not available. And the only way I know to get this fact into evidence, if it is a fact, there has been a diminishment, is to ask someone who is actively engaged in the business, nation-wide, both from his own experience and the experience of his salesmen.

Mr. Burke: I would say some foundation should be laid to indicate this witness' knowledge.

Hearing Examiner Creel: I think you are right. I think if [fol. 267] you will ask the witness what the basis for his knowledge, or opinion, or estimate would be, then I will permit you to ask him what his estimate of the situation is.

Mr. Rogel: All right.

By Mr. Rogel:

Q. Have you been informed or have you been made aware by anyone in your organization, or by any study you have made that there are less prospective retailer customers for your shoes than there were in 1948?

Mr. Burke: I object to the question. It calls for hearsay.

Hearing Examiner Creel: Overruled. Go ahead, sir.

By the Witness:

A. I think I can go back a number of years and establish the fact that we possibly at one time had maybe 1500 or more accounts on our books than today. From contact with our salesmen, when we go over territories and towns in which we don't have outlets—and I don't have the towns in front of me—there is an ever increasing explana-

tion that it is the factory-owned stores, or controlled stores, or controlled departments, or factory controlled departments. And without being specific, statistics bear out the fact that factory-owned stores' business has increased tremendously in the last ten years.

By Mr. Rogel:

Q. Well, sir, then in your opinion, today there are less prospective retailers who would be prospective outlets than there were ten years ago?

A. Yes.

Hearing Examiner Creel: Are there any reliable figures of any kind which would show the number of shoe outlets in existence today, and for past years, that you know of?

The Witness: On the spur of the moment, no, I don't.

[fol. 268] Cross-examination.

As to whether it isn't a fact that net sales for the witness' company in the year 1959 showed an improvement over 1958, the witness said, in units, no. As to dollars and cents the witness said, there was a price rise in the meantime. He thinks their dollar earnings for 1959 were higher than in 1958. The correct total sales figure for his company for the fiscal year ending December 31, 1959, was \$17,884,000.00. The figure \$17,722,379 was the company's reported estimate. Net earnings for the year on sales were \$1,165,648. This is about 6 percent of sales. That earnings figure was a record earnings for the company.

In the annual report published by his company for the twelve months ending December 31, 1959, the balance sheet as of December 31 showed his company's current asset position to be \$9,413,800. Included in that was \$1,600,616 of cash, and a million dollars in marketable securities in addition to the accounts receivable and inventories. Then current liability as at December 31, 1959, which included accounts payable, dividends payable, and the normal accrued liability for taxes on income, is \$1,530,696. That gives his company a very good current ratio. They worked hard for it.

Also included among the several national publications in which his company advertises are Holiday and Sports

Illustrated. The purpose of their national advertising program is to establish brand recognition for their product in the industry. He thinks any advertising is pre-selling. It is an important factor in their success.

. . . . .

The categories under which their shoes are marketed are the Weyenberg line and Portage, two different selling organizations. The shoes are identical. The Port-O-Ped and Massagic are identical, but are marketed under different brand names and through different selling organizations. There is a dual sales organization, one for Portage and one for Weyenberg. There are 30 salesmen on Weyenberg and 25 salesmen out for Portage. In isolated cases the ones out of Portage sell both. The Weyenberg salesman will sell the Portage line in the Rocky Mountain States where there is one salesman to cover the area. Otherwise there is a sharp demarcation between the two groups of salesmen.

The salesmen do not call on the same prospective customers because if they did they would be competing with their own organization. It is obvious that if a dealer stocked Port-O-Peds no purpose would be served for the salesman of Massagic to call on him. As to whether that is the way of selling shoes to retailers works on various other brands that are competing, namely, if a retailer has a certain line, a salesman that tries to get into that store with his competing line may run up against the same type of sales resistance, the witness answered, assuming the entire lines are comparable in so far as quality and styles and patterns, that would be true.

The same identity applicable to Massagic and Port-O-Peds is applicable to Com-Flex and Comfo-Treads. They are the same shoe but are marketed under different selling organizations. The same principal applies to Aristocrat and Boulevard. There could be a few isolated cases of overlap between the higher price range of Aristocrat and Boulevard into the Com-Flex or Comfo-Tread. It is possible that Olympic and Marquette, which is the low end, may in turn overlap into the Boulevard and Aristocrat brand names.



The Roblee line competes with Port-O-Ped line and Massagic, which are one and the same from the standpoint of price. There are quite a number of other shoe brands of other manufacturers that also compete with Massagic and Port-O-Ped lines. Everybody is competing for the same market on comparable brands as to price and style and quality.

Among competing brands for Massagic and Port-O-Peds would be shoes manufactured by Freeman, Jarman, Wall Streeter, the Nunn Bush and the Edgerton lines, Crosby [fol. 270] Square, Bates Shoe Company to some extent, it is pretty much geographic, Mansfield and Bostonian and Plymouth and the Winthrop brand of International. These brands all cover pretty much the same price category. As to the Pedwin line, it is also competitive in the lower end. They start at \$11.95, \$12.95, \$13.95.

In the price range of shoes that would be competitive with his Aristocrat, Boulevard, Olympic and Monarch, along with Pedwin, would be a number of other shoe manufacturers. Various brands of A. S. Beck, that is the Shoe Corporation of America, the Douglas brand of General Shoe could be in the lower end of the line. Flagg Bros. is not so much a competitor. It is a different type of merchandise. The Calumet brand is a different type of merchandise. It goes down a little lower—\$8.95. He doesn't regard those in the competitive area. The Huth-James brand would be more or less competitive with Leverenz Shoe Company for the same reasons he has just mentioned. The Fortune brand of General Shoe would be in the lower end of the line. Another brand marked Great Northern is General's make-up line.

Make-ups sort of lose their identity as far as competition with brand names are concerned. Brown has some of that, too. About 15 percent of his company's line is make-up. They may sell make-ups to a family shoe store, a chain of stores. Some could be nationwide. It would include types like J. C. Penney, Montgomery Ward or Sears, Roebuck. Half of their make-up goes in that area. The other half is to a different type of operators which the witness would classify as the family shoe store type. Conceivably some of these operators could be located in shopping centers. It is quite obvious that shopping centers are becoming of

increasing significance as far as the merchandising of their shoes is concerned.

Getting back to the lines of competitive brands to Aristocrat, Olympic, Boulevard and Monarch grades, the Hardy line of General Shoe is possibly on the lower part of the competitive area. He has never heard of Jelko line. In some cases he would regard John E. Lucy Company as a competing brand. They are a smaller company. Weyenberg [fol. 271] is up in the first twenty of the shoe companies as far as dollar volume, but the witness stated there could be quite a gap between the top three. Thom McAnn line of Melville would not be a competitor or have competing brands. They have \$10.95. The Pilgrim brand of Plymouth Shoes could be a competing brand. The Biltomore brand of Florsheim is the lower end of the Florsheim line. Part of the Florsheim line would compete with the Massagic and Port-O-Peds. They start at \$19.95. Florsheim and Nunn Bush would be competitive with the lower part of Massagic and Port-O-Peds. Stacy Adams is a little higher merchandise. Johnson-Murphy is higher priced.

The price range of the Massagic line is \$15.95 to \$21.95. Com-Flex and Comfo-Tread are \$14.95 up to \$17.95. Aristocrat and Boulevard, \$15.95 and \$16.95, just a short line. Olympic and Monarch brands start at \$10.00 and go up to \$14.95.

It is Mr. Shannon's experience as a sales manager that there is a turn-over in accounts where you acquire new accounts for your shoes and lose accounts over a period of a year's time. You have business mortalities the same as human mortalities. This could happen either by reason of a store going out of business or by reason of a store changing to another brand line of merchandise different from yours. That happens in the shoe business when a store owner may choose to buy one of the competing brands of shoes that compete with your line of shoes. It is also true that your line replaces another person's line. And when your line replaces another shoe manufacturer's competing line, that manufacturer has lost an account to that extent. It is part of his salesman's job to go out and try to sell his line of shoes in preference to some competitors' line. It is part of doing business.

The Weyenberg brand of shoes is sold in a store called

Beaver Bootery at Beaver Dam, Wisconsin, if there is a Beaver Bootery. He doesn't know whether Roblee shoes are sold in that store. It is a very good account of Weyenberg's, a very fine man.

The name Bob's Shoes in Oelwin, Iowa, is familiar. He could not say definitely if it is a good account. He doesn't [fol. 272] know whether his company sells shoes to that account. The witness doesn't know if Vandenburg's Shoe Store in Portland is an account of theirs. As to Vandenburg's in Oswego, Oregon, he said the records are kept in Oregon.

The witness was asked by Government counsel a week ago to look over this list of franchise stores and see if he recognized stores. That is the basis on which his testimony was given as to what he recognized from looking at the list. As to whether the witness is familiar with a Wesley Spellman store at Portland, Oregon, he said, there is no use talking about Portland, Washington or California. I don't know. He would not have personal knowledge unless he had the records. Unless it was in one of those letters that was introduced. He really didn't have personal knowledge in regard to that.

The witness doesn't know whether his company sells the Perkins Roberts Shoe Store in Chickasha, Oklahoma. He doesn't know if the Bratton Quality Shoe Store of Lebanon, Pennsylvania, is an account. His company has sold Bishop's Shoe Company, Bellevue, Pennsylvania, over the years. Whether they do today or not he doesn't know. Bishop's Shoes at Mount Oliver, Pennsylvania, would be the same thing. The Hoover Shoe Store in Oregon would be outside his acquaintanceship. He does not recognize Bartel's in Middletown, Ohio. The name McKinnon's B & M Bootery, Antigo, Wisconsin, doesn't strike him. The same Steeles Family Shoe Store in Sulphur Springs, Texas, is not familiar. They are selling some of the Faflik Stores in Cleveland, but which ones he couldn't tell offhand.

In preparing for his testimony the witness didn't check his records. He went through hurriedly. It would take him hours. The name of Fogerty Shoe Store is familiar, but he doesn't know. The store down the street, the Charles Strauss Store, is a customer of Weyenberg. The witness doesn't think he has any other shoes other than Weyenberg.

It is not a plan account. Charles Strauss buys shoes. They have no plan accounts. They have no control over Charlie [fol. 273] about his purchases. He is free to buy from anybody. It so happens he chooses to buy his shoes from Weyenberg Shoe Company, and he doesn't buy any other shoes to the witness' knowledge. He is a good customer.

Q. Now, if a salesman of a competing brand were to call Mr. Strauss, isn't it a fact that salesman would find it somewhat futile to try to put a competing brand in Mr. Strauss' store?

Mr. Rogel: I object. It calls for speculation, and this man is obviously not the one to answer; he would not be able to answer.

Mr. Burke: This man testified on direct examination that salesmen don't have the same opportunities calling on Brown Franchise stores, and I am just asking the same kind of question in regard to a store that is one hundred percent Weyenberg.

Hearing Examiner Creel: I will overrule the objection. Let him answer if he can.

By the Witness:

A. Charley Strauss has freedom to purchase any line he wishes to purchase; and I presume if someone did try to sell him they ~~would~~ have a hard time. I am perfectly willing to answer that question.

By Mr. Burke:

Q. He is a satisfied customer; he likes the Weyenberg brand of shoes he is selling, and for that reason he does not choose a competing line of shoes?

A. That is right, and he signs no agreement about it.

Q. But he doesn't choose to use a competing line of shoes?

A. I presume not. There is no compulsion about his buying our shoes.

They furnish retailers with sales aids, such as display fixtures, to help them in the merchandising of Weyenberg shoes. The retailers pay for neon signs in the windows.

His company furnished the sign that Mr. Strauss has at 214 Wisconsin, which has the name Weyenberg that lights up. Signs of that nature are not furnished to every customer. [fol. 274] There is only Charlie Strauss in the United States. The witness would be very happy to have more. They do not furnish other sales aids or helps to their customers such as accounting materials or record keeping. Some salesmen, the more capable ones, will consult with the merchants in helping with merchandising. Others don't bother with that.

The witness was shown Commission's Exhibit 143. It is an historical record of the account. The columns on the left-hand side of the Exhibit with numbers from 1 to 6 have to do with certain classifications of shoes. No. 1 is Massagies, starting at \$15.95. No. 2 is a kip label, which are calf skin, starting at eighteen—that is the retail price. No. 3 would be the Aristocrat and the 4000 series. The 4000 series is somewhat comparable to what their Aristocrat used to be. The company came out with the 4000 Com-Flex and Compos-Treads series about a year ago. It did what the Buick Company did, changed the names and the grades. It is a bit different type of shoe. They were a feature shoe. Column No. 4 is Olympic and Monarch. No. 6 would be work shoes. The work category would include service shoes. It would include some insulated boots. Huth-James have boots which could be comparable. They were competitors in that Huth-James may have some boots that compete with the lower end of Weyenberg's boot line. About 6 or 7 percent of the business of Weyenberg is in the classification of boots, utility, work or service shoes. Their make-up production is 15 percent of the total company business. That leaves a balance of about 78 percent for their other brands of shoes.

Commission's Exhibit 146 is a letter dated June 19, 1958. It was written by the witness in connection with the preparation for his testimony in the Anti-Trust case. That is the same kind of information he was seeking out in regard to the letter of April 22, 1960, which is Commission's Exhibit 147. And the witness testified in the Anti-Trust case.

Weyenberg's credit terms are 2 percent, net 30 days, in Wisconsin and states touching Wisconsin, next states fur-

ther removed are 2 percent, net 45 days, and farther removed, 60 days.

[fol. 275] There is a Belk shoe store that is a customer of theirs. It is located in North and South Carolinas. They are general stores, clothing stores, department stores. It is a sort of chain of shoe outlets. Their discount from Weyenberg would be the equivalent of about 5 to 6 percent.

The witness was shown Commission's Exhibit 144, the sales record for Blynn's Shoe Store. As to whether it was a new account beginning in November, 1957, the witness said, that is the assumption. He wouldn't know whether Blynn's Shoe Store was in business prior to November, 1957, without checking.

Weyenberg has four plants. In each plant they make a different grade of shoes. Their total employment is about 1500. The stock of Weyenberg Shoe Manufacturing is listed on the American Stock Exchange. It has been for 20 years.

#### Redirect examination.

They have two factories at Beaver Dam. Five or six hundred people are employed there.

As to whether Weyenberg advertises a price range in its national ads or whether they put the specific prices of shoes indicated, the witness said, Massagic is advertised at \$15.95 and up. They follow the same procedure with their other lines.

Commission's Exhibit 150, a photostatic copy of the ledger card of Weyenberg Shoe Company for Blinkinshop Shoe, Maringo, Iowa, was marked for identification. This record covers sales from 1947 through 1959.

Commission's Exhibit 151, another record of Weyenberg Shoe Manufacturing Company, showing shipments to Blinkinshop Shoe Store during January, February and March of 1960, was marked for identification. Commission's Exhibits 150 and 151 were received in evidence without objection.

[fol. 276]

May 6, 1960

GEORGE E. FRIEDLY, called as a witness for the Commission, testified as follows:



### Direct examination.

The witness is here under subpoena. He is employed by the Leverenz Shoe Company, Sheboygan, Wisconsin, as Assistant Sales Manager. His duties comprise working with their retail salesmen, working as liaison man between the home office in Sheboygan and their salesmen on the road in the various states that they cover, and their independent retail outlets they serve throughout the country. In addition to that he handles the advertising and much of the sales correspondence that comes in relative to various situations that develop in the territory. He has been in that job about 4 years, and with Leverenz a little over 6 years. For the two years prior to becoming Assistant Sales Manager, he traveled on the road for the company in upstate New York as a salesman.

His company is a corporation. The principal officers are: Mr. Clarence Leverenz, President, Mr. Carl Esch, Secretary-Treasurer, Mr. Robert Leverenz, Vice-President, and Mr. John Esch, Vice-President in Charge of Sales. The company is 41 years old as of April 1. Its gross sales in 1959 were about 3 million dollars. Pairage in 1959 was about 575,000 pairs. They have three manufacturing plants: one is in Sheboygan, the main factory, then New Holstein, Wisconsin, and one in Valders, Wisconsin. Leverenz has close to 400 employees.

His company distributes 90 percent of their shoes through independent retail outlets. The other 10 percent would be make-up business, some to jobbers and some to direct sale houses. They have between 20 and 25 salesmen traveling for them. They sell shoes throughout the country with the exception of the southern states, the Carolinas, Florida, Georgia, Alabama, Mississippi. They have about 3000 customers or dealers. Leverenz produces exclusively men's and boy's shoes, in the popular price range between \$7.95 and \$12.95 retail. Their salesmen sell the complete line, men's and boys'. Their two major brand names are Calumet and Lake Line.

[fol. 277] He is quite familiar with the lines of their competitors. The Brown lines in competition with them are Pedwin and Buster Brown boy's shoes. Pedwin and Sherbrook are the same shoes.

The Pedwin line is in competition with them because

of its price range and features. It is generally conceded they are shoes of comparable price range and are similar style-wise as to styles that each line has in common. Both Pedwin and his two lines would be sold to the same type of customer. They are particularly interested in the independent retailer who is interested in a brand in the price range of \$8.95, \$9.95 and \$10.95, the popular-priced brands. They are both trying to sell the same type of consumer, the young men. His company is particularly interested in the young men's segment of the shoe business.

In his capacity as Assistant Sales Manager the witness does a lot of traveling through the country and talks to salesmen and customers and competitors concerning industry condition. He attends shoe shows. He reads trade papers and publications in the shoe industry.

The witness' attention was called to Commission's Exhibit 141-J, the Winona Bootery in Winona, Minnesota which went on the Brown Franchise Plan December 16, 1958. That was a very good account of Leverenz for many years. Then Commission's Exhibit 152 was marked for identification. It is a photostat of a sales record of their sales to what was formerly the B & D Shoe Store, now the Winona Bootery, from the years 1952 through 1959. The record was kept in the ordinary course of business and is one of the regular sales records the company keeps for each account on its books. Commission's Exhibit 152 was received in evidence without objection.

From Commission's Exhibit 152 the witness testified that sales from Leverenz to that store in 1958 was \$2,090.85. The figures in the right-hand column were the total sales from his company to that store for the years 1952 through 1959. The figures in the middle of the record were those sales for the different months of the particular [fol. 278] year. Leverenz has made no sales to that company during 1960. They received no complaints about their shoes during or prior to 1958 from the Winona Bootery. They are in the process of developing another outlet in Winona, Minnesota. They do have another store they are selling some shoes, the Arens Shoe Store. Sales to that store are not in the volume they were to Winona Bootery in 1958. At this time Commission's Exhibit No. 153 was marked for identification. It is a photostatic copy

of the sales record of Meyer's Shoe Store in Watertown, Wisconsin from the year 1953 through 1956. It is a photostatic copy of the sales record of the company. It is a record kept in the ordinary course of business.

On Commission's Exhibit 153 the figures in the right-hand column under the term "Shipments" indicate the dollar amount of shipments for the particular year that is shown in the extreme left-hand column. And the figures shown for the various months throughout the respective years are accumulated to add up to the figures in the right-hand column. The right-hand column is the total for the year. This was photostated within the last ten days from the company's records. The attention of the witness was called to the year 1954 which showed one sale for June, \$695.73. That is not the only sale. Maybe he made a mistake. This is the sum, the cumulative total for the half year: January, February, March, through June, six months. The \$1316.10 for the year, is the difference between this and this, (indicating on the exhibit). This is the remaining six month's sales. As to whether this is a record kept by month, in the initial card—at one time they did make the records monthly, they posted monthly. You will notice in some instances where it was done.

Commission's Exhibit No. 153 was received in evidence without objection.

The witness was shown Commission's Exhibit 141-T and his attention was called to the Meyer Shoe Store at 206 Main Street, Watertown, Wisconsin, which went on the Brown Franchise plan August 2, 1956. This is the [fol. 279] same store that Commission's Exhibit 153 refers to. He remembers no complaints about their shoes from that store. Any such complaints would have come to his attention. He doesn't believe they have been able to obtain another outlet in Watertown, Wisconsin at the present time. They have lost that account.

Commission's Exhibit 154, was marked for identification. It is a photostat of a letter written to Meyer Shoe Store in Watertown, Wisconsin by the witness on the 18th of May, 1956. Commission's Exhibit 154 for identification was offered in evidence.

Mr. Burke: I object to the offer of Commission's Exhibit 154, as being self-serving; not binding on this respondent.

For that reason, I believe it is not proper evidence of any—it has no probative value, and should not be admitted in this proceeding.

Hearing Examiner Creel: Perhaps I had better read it.

Mr. Timony: Yes, sir. (Handing document to Hearing Examiner).

Hearing Examiner Creel: I will overrule the objection. Commission's Exhibit No. 154 will be received in evidence.

Hearing Examiner Creel: With respect to this last exhibit, I don't know what it proves, except that they tried to keep the account.

At this time Commission's Exhibit No. 155 was marked for identification. This is a letter from G. H. Meyers of Meyers Shoe Store, Watertown, Wisconsin, dated March 8, 1956. It is not in reply to the previous exhibit. It is prior to that letter. Commission's Exhibit No. 155 was offered into evidence.

Mr. Burke: I object to the offer of Commission's Exhibit No. 155. It is not binding on this respondent; is self-serving; the respondent has no opportunity of cross examining the writer of this letter.

Hearing Examiner Creel: I will read it.

Mr. Timony: Here it is, Your Honor, (Handing document to the Hearing Examiner).

[fol. 280] Hearing Examiner Creel: I will overrule the objection. Commission's Exhibit 155 is received in evidence.

The witness wrote the letter, Commission's Exhibit 154, after a discussion with their salesman, Walter Vatovetz, their Wisconsin representative, about the account. He came into the office and mentioned that Mr. Meyers had told him that he was considering going on the Brown Franchise Plan, and he hoped that the company would write to him and see whether they might be able to dissuade him from doing this, and consequently retain him as an active customer of theirs. And this is exactly why the letter was written.

At this time Commission's Exhibit 156 was marked for identification. The witness identified it as a photostatic copy of their sales record for the Emerling Shoe Store in Hamburg, New York, from the year 1949 through 1957. It is a record that the company keeps in its files. The

Emerling Shoe Store of 15-17 Main Street, Hamburg, New York, shown on Commission's Exhibit 141-M as having gone on the Brown Franchise Plan on March 15, 1956, is the same shoe store referred to in Commission's Exhibit 156 for identification. The address is different, but they probably have moved. Commission's Exhibit 156 was received in evidence without objection.

When the witness was a salesman for Leverenz prior to becoming Assistant Sales Manager, he traveled out of upstate New York. During that time he contacted the Emerling Shoe Store in Hamburg. He never sold them shoes. He stopped being a salesman for Leverenz in September, 1954. He was the only salesman for Leverenz covering Hamburg, New York at that particular time. The sales shown in Commission's Exhibit 156 for 1954 and prior years to that shoe store were sold by another Leverenz salesman, Charles Oslund. The witness took over that territory when Oslund had a heart attack about the beginning of 1954, and the witness traveled that territory for him while he was convalescing. So the sales by Leverenz to Emerling during 1954, were made either [fol. 281] through the salesman from whom the witness took over the territory, or through mail orders.

The witness is familiar with the term Brown Franchise Plan. He has gotten that knowledge from talking to dealers probably more specifically from various of the company's salesmen, and other salesmen that he has talked to. He would imagine he has talked to other manufacturers about the Brown Franchise Plan. Just off hand he doesn't remember anything specific. He has talked to their retail customers about the Plan.

Q. Do you remember any specific instances of talking to those customers?

Mr. Burke: I object to the line of questioning; it is leading up to an hearsay type of answer, that seems entirely improper in this proceeding.

Hearing Examiner Creel: I don't know what it is leading up to. With certain of the previous witnesses they have been asked what their understanding of the Plan was. I assume that is what he is leading up to. I will overrule the objection.

By the Witness:

A. I don't recall any specific instances of talking to a particular Brown Franchise dealer about the Plan.

By Mr. Timony:

Q. Have you talked to Brown Franchise dealers about the Plan?

Mr. Burke: Object; he just answered that.

Hearing Examiner Creel: He said he didn't recall any specific names of people he had had conversations with. But presumable he could answer he had had some, but didn't recall who they were. Overruled.

By the Witness:

A. I am sure I have, in the course of discussing our line with a particular dealer; a dealer who, for instance was a Brown Franchise dealer, this would almost have to come up. [fol. 282] As to his understanding of the Brown Franchise Plan, the witness said, it is a plan whereby a shoe retailer can secure certain specific services from the Brown Shoe Company, if he indicates a willingness to purchase shoes from them during the course of a year. A plan whereby he can receive merchandise and service, such as aid in helping him set up his books, and also display services. The small independent doesn't have too much money to spend on this type of thing, nor the time. I believe there is a plan whereby he can purchase rubber goods if he is on the Plan, for a certain specific saving, too. I imagine that display signs, window displays, store layouts, all come under this Plan.

According to his understanding, a retailer who goes on the Plan agrees to purchase shoes from the Brown Shoe Company. His company's prospects for selling shoes to the Brown Franchise dealers are poor, except for a particular specialty type shoe, which for some reason or other Brown might not be manufacturing. He can cite several instances. Several years ago, specifically 1955 and 1956, they had a chisel toe shoe, a brogue, which was very popular. Brown didn't carry it. He knows of specific instances where his company sold those shoes to Brown stores. At



the present time there is another particular style, a pointed, very, very pointed shoe. They call it the Pintoe, and Brown, as far as he knows, does not manufacture this shoe at this time. It is possible his company could be selling their stores this type of shoe. The witness knows of two instances where his company is selling them.

He knows of no instances where his company is selling their full line to a Brown Franchise dealer. They have sold shoes to Faflik's Shoe Store in Cleveland, Ohio. That is one of the stores to whom his company is selling the pointed shoes that he mentioned. They were selling Faflik's prior to 1956. There was a reduction in purchases by Faflik in 1956.

Leverenz has one particular indoor illuminated sign that it offers to its retail customers. That is the Calumet and Lake Line electric sign. Retailers may purchase it or they may also receive it when they buy 120 pairs of shoes from [fol. 283] the company. The company's cost is about \$12.00 or \$13.00. The company does not offer inventory forms and accounting assistance to their retailers. They do not offer any kind of insurance deals to their customers. They do provide customers with advertising counter cards, specifically mentioning the company's lines two times a year, in the Spring and Fall. That, and the electric sign he mentioned, are all his company offers them.

The witness knows of one particular instance of a shoe manufacturer who has recently gone out of business. Hiawatha Shoe Company, Red Wing, Minnesota. They made children's shoes. He is not sure in what price range. It was about 8 months ago.

Ninety percent of his company's customers are in independent retail outlets. It is becoming increasingly difficult to find independent retail outlets today. Every year it is more difficult. He attributes this first of all to the shift in business areas in the city which has brought about a change many times in the location of a shoe store from the downtown shoe store or a secondary shoe location to a shopping center. And because of the tremendous amount of money that is necessary for a store to go into business in a shopping center. It really takes a certain amount of time before a center becomes fully independent. A small retailer simply cannot get into these things; he

doesn't have the financial backing to take a store in the centers, and some of the larger manufacturers are in a position to provide the capital to either finance the stores directly on their own, or as company-owned, or as an independent to provide him with capital to set up a store. In other words, many stores are being closed in what formerly were business centers, and they are not being reopened under the same conditions as they were open for business under previous conditions.

In addition to the matter of change in business areas in cities, he said, stores either operating under International Merchants Service Plan, or Brown Franchise Plan don't provide us with the same type of opportunities for sales that a completely independent retailer does. We are [fol. 284] restricted by the agreements of the plans in question as to our ability to go in there and sell the man our complete line, which is, of course, what we want to do.

#### Cross-examination.

There is a line of Brown Shoes, Pedwin, and Sherbrook label also, that compete with their line of shoes. Other manufacturers' brands also compete with his company's shoes. A. S. Beck Division of Shoe Corporation of America do not. The Douglas brand does compete to a certain extent. Douglas is a little bit higher priced. The Leverenz retail structure begins at \$8.00. Douglas has some shoes at \$9.00 and \$10.00. The majority of the Leverenz shoes are at \$9.95. The witness would say his company would not compete as directly with Douglas, because they are a little bit higher.

As to whether the Pedwin line starts at \$10.95, the witness is not sure where it starts this season. He agreed they go from ten to \$12.95. As to whether the witness would classify Pedwin with the Douglas, outside of his company's price group, he said, the Pedwin has shoes below ten. That would make those shoes below \$10.95 competitive with his company's brand, and to an extent it would make the whole line competitive.

Flagg Bros. shoes compete with his company's line. They are of the lower price range. Flagg Bros. chief price is \$10.95. That would put them directly opposite his company's shoes. He regards the price factor as a

criteria in determining whether a line is competing. The price also has a certain relationship in the shoe business to the quality.

The Fortune brand of General Shoe is above the witness' line, but General has a lower end, the Davidson line, which actually goes a little below his company's line and then moves up. Fortune is in competition as there is an overlap there. Great Northern was a former division of International Shoe. Their price begins at below \$5.00. They range up through his company's prices. He would regard those as competitive.

[fol. 285] The Hardy brand is a little lower than the Flagg brand, and is about a dollar at retail net below Flagg so their shoes almost without exception would retail at \$8.95. It would catch the lower end of his company's line. As to the Jelko brand of John E. Lucy Company, the John E. Lucy brand is familiar to the witness. There again, there is an overlap. They begin at \$10.95.

The Thom McCann brand line of the Melville Shoe Company would be very competitive with his price line. The Pilgrim of Plymouth Shoe is competitive. He is acquainted with but doesn't run into it.

Leverenz shoes are not distributed in the New England area to any great extent. Their heaviest concentration of business is in the area immediately surrounding the Great Lakes, beginning with New York State east, and moving down through Ohio and Pennsylvania, and more heavily in Indiana and Illinois, Iowa, Minnesota, Nebraska and the Dakotas.

Thom McCann line is not sold to independent retailers. Hardy is not sold. Thom McCann is not sold, and Flagg Bros. is not. Those three are not.

The Craft brand of International would begin lower than his company's shoes, but would also be competitive. They would also have a lower range on the Club brand, too. That places it in the area of their shoes. He would say competitive in price and style-wise. The lines mentioned are competitors to Leverenz in terms of price and style, but Huth-James would be strictly price. The Huth-James style is not in the same market of customers as their shoes, which are for teen-age young men. Similarly, Huth-James would not be a competitor of Pedwin.

His company's present sales force of 20-25 is an increase over the 18 they had listed in Dun & Bradstreet a year ago. At that time Dun & Bradstreet indicated the company had 3,500 accounts. The witness stated that his figure of 3,000 given at the beginning of his testimony would be more accurate.

[fol. 286] His company also distributes its shoes on a make-up basis to a small extent, about 10 percent of its business. In one instance as to whether they sell their line to a chain store or mail order house, that would be a part of the 10 percent. This 10 percent takes into consideration everything but the sales to independent retailers. This may be wrong by a couple of percentage points, but it is close.

The witness didn't think it was correct that his company's sales volume increased in 1959 over the previous year. Without a doubt the dollar volume would be up because of the present price adjustments which went up. His company's total sales figure is approximately 3 million dollars. In his line of business he may or may not be advised of the dollar figures of his company's sales.

Selling a complete line is the sales objective of his salesmen in placing or getting a customer for their shoes. It is a normal sales practice in the shoe industry generally of the salesmen to have their complete line placed with a retail shoe outlet. It would not apply where a man was selling strictly a specialty type, hot item type line, but generally speaking, you would find that it would be the case. His company has a hot item, but he would not call it a hot item line. It is a complete line. From the standpoint of merchandising your shoes, he advocates doing it on a complete line basis.

A turnover in accounts where they lose an account for one reason or another, and perhaps gets new accounts is characteristic of the business. It could be when you get a new account, you frequently displace some other manufacturer's line of shoes in that particular store. And when you lose an account, it sometimes means that a manufacturer's salesman has been able to displace your line of shoes in that particular store.

He didn't know whether Eckland's Clothing Store in Minneapolis, Minnesota has replaced Leverenz line of

shoes with Pedwin. There are a variety of lines in that store. A loyalty to any particular line would be hard to distinguish. So far as he knows Leverenz still has [fol. 287] Modern Shoe Store in Wausau, Wisconsin as an account.

. . . . .

The witness was referred to Commission's Exhibit 152, a photostatic copy of his company's business records of the Winona Bootery, previously known as B & D Shoe Store. He guesses it changed its name at the time that it went on the Brown Franchise Plan. As far as he knows it was a change of ownership too. They were both elderly gentlemen, and ecided perhaps they had had enough of the shoe business.

Counsel for respondent called the witness' attention to Commission's Exhibit 153 and stated that the numbers on the righthand column under the heading of "Shipments" don't represent a total of the numbers on the lines opposite these total shipments, which are presumably yearly shipments. The witness said at one time his company posted its sales by the month, as can be seen on the Exhibit: November, \$397. That was the only posting, and consequently the only sale in 1953. They they made the change from posting monthly to bi-annually, so they posted the total in June, \$695.73, for the first six months of the year. The figure, \$1316, would be the total of the \$695.73, plus whatever it is, ~~six~~ hundred. There are some other figures not recorded here. That would also hold true for the other figures shown on the monthly basis of lesser amounts than the total on the right-hand side. His company did not sell this account shoes after May 1956. That is the total annual sales for the Meyers Shoe Store.

That explanation would also hold true for Commission's Exhibit 156. Commission's Exhibit 156, dealing with the Emerling Shoe Store at Hamburg, New York, indicates that they ceased being a substantial customer in the year 1954.

His company has its regular terms, 2 per cent, 30 days. Then a 5 per cent cash discount is available to retailers upon an additional seasonal purchase, six months, of 60 pairs of shoes or more. He doesn't think 60 pairs is

volume but you could consider it a volume discount. It [fol. 288] is a matter of their being able to realize a savings in processing, in packaging, in shipping larger orders as a result of that, and they pass the additional 3 per cent on to those dealers. It is an additional 3 per cent, not an additional 5 per cent.

Their make-up shoes do not go to chain stores in shopping centers, with one exception. That particular chain has stores in the southeast, mostly in Louisiana, Kentucky, and areas where his company is not doing any volume of business to speak of.

His company has an estimated 20 to 25 outlets for their shoes in the City of Milwaukee. This should be one of the heaviest concentrations of their outlets. They wish it were a little heavier. They have tried to devote a considerable amount of attention to their sales effort in this area.

His company is in the process of developing another outlet in the area of Winona, Minnesota when they lost the account that was a franchise account. He doesn't know what the state of development that outlet is in at the present time. When an account may be lost for the usual turn-over reasons that may occur in accounts, they expect their salesmen to develop another outlet in the particular area. If a store is already carrying a competing shoe to his company's line, it takes real skill for a salesman in selling that customer, to replace them.

The Fafik store in Cleveland, Ohio is currently a customer of his company as far as the pointed shoes are concerned. There are probably half a dozen Fafik stores. He is not including all of them. They sold shoes to just some of the stores of that group. His company has other outlets in the Cleveland area for their shoes. As to whether the Fox Shoe Store in Cleveland, Ohio carries some of their Calumet line, he was not acquainted with them.

As to whether his company advertises in any national magazines, they advertised twice in Esquire Magazine as of this last October. That is something new in the way of a program for them. They cannot go into it extensively because [fol. 289] of the tremendous amount of money involved, but did advertise twice in the Midwest edition of



Esquire. That was a new departure from his company's previous policy.

Redirect examination.

The cost of the two ads in Esquire Magazine ran \$474.50 apiece. His company did no other national advertising last year. There are other facts in addition to price that go into determining whether or not shoes compete with his company's shoes. Price must be a basic factor, in competition, but style would be a complementary factor to price. The witness would say a young male consumer, of some 20 years, would be looking first for style in a shoe. That consumer would purchase a \$10 shoe rather than a \$15 shoe in the same style. Young men, as opposed to the rest of humanity, are rather style conscious. Particular styles run in streaks of favor among them.

His company's retail price goes up to \$12.95. As to whether the Huth-James Company is in competition with his company's shoes, price-wise they are in competition, but style never meant as much to Huth-James as it does to his company. He doesn't think he should say Huth-James and Pedwin are not in competition. Price-wise they are in competition. Some shoes in the Pedwin line are approximately the same style as some shoes of Huth-James. He thinks it is common knowledge among shoe retailers and shoe manufacturers that in terms of style Huth-James does not have a highly styled line. He could be wrong, because he hasn't seen their new line.

At the most about 3 to 4 per cent of his company's business is in speciality shoes. That is a guess, as near as he can come to it.

Q. From your experience in the shoe industry, would you say it is generally true that a retail store which is going to change lines, will try to sell out all of the old stock first, and this means they will stop ordering from the manufacturer which supplied them in the past?

[fol. 290] Mr. Burke: Object to the form of the question. It calls for speculation, and doesn't talk about any particular situation.

Hearing Examiner Creel: I gather he is asking if it is

generally true in the shoe business. Is that your question?

Mr. Timony: Yes.

Hearing Examiner Creel: Overruled.

By the Witness:

A. I would say that is generally true.

His company does sell to a customer who has a chain of retail outlets, some of which are in shopping centers. The percentage of their over-all dollar sales in a year to that chain would not be more than 1 per cent. Conceivably it could be less.

The Pedwin line of shoes is a highly styled line. The witness was shown Commission's Exhibit 15, entitled United Men's Division, Brown Shoe, April 25, 1958, the suggested retail prices at the bottom of the exhibit. These suggested retail prices begin to meet his company's suggested retail prices, and then they advance to the top which is \$13.95, which his company's price range would fit in within the bounds of that suggested retail price list.

Recross-examination.

The heart of his company's line of shoes is presently at \$9.95 price. That means the greater percentage of their shoes carry that suggested retail price of \$9.95.

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[fol. 291]

March 9, 1961

Counsel for the respondent stated for the record that, on the basis of a previous understanding with counsel supporting the complaint, the fact that the respondent's witnesses are not under subpoena will not be considered as a matter of argument.

ALVIN MUSGROVE, called as a witness for the Respondent, testified as follows:

### Direct examination.

The witness resides in Olney, Illinois. He has retail shoe stores at Olney and Mount Vernon, Illinois. Mount Vernon is 75 miles from the town he lives in. Both stores are under the Brown franchise program.

The size of Olney is 8500. There are 8 other locations in Olney which sell shoes. Two other family shoe stores and six shoe stocks in department stores and the like. One of the other shoe stores is on an International plan.

The sales area of the Olney store is not confined to the community of 8500. They would draw trade from quite a way. They would draw trade from towns located about 25 miles from Olney in each direction.

Mount Vernon is about 16,500. There are four family shoe stores there such as his store. A family shoe store has men's women's and children's shoes. There are 7 other places besides those 4 family shoe stores where [fol. 292] shoes are sold, so that would make 11 altogether. Two of the family shoe stores in Mount Vernon are under the International type of plan. The name of his store in Mount Vernon is the Musgrove Shoe Store. The witness has had that shoe store since August of 1952. It went on the Brown franchise program when they opened the store.

As to what encouraged the witness to go on the Brown franchise program with regard to that store, he said, I thought if I could have the bookkeeping system that was available to me, the fact that I couldn't be in the store all the time, would be down there one day a week at the very most and look it over, was one thing. The line of shoes that they represented was another thing. The line of shoes that I wanted that were also available primarily in that town were Brown Shoe Company lines. The other store in Olney was not already a Brown franchise store.

His Mount Vernon store now carries Naturalizer, Life Stride, Smartaires, Glamour Debs, Robinettes, Buster Brown, Robin Hood, Roblee, Pedwin and Hush Puppies. There are other lines in there such as canvas footwear and other footwear. They have B. F. Goodrich canvas footwear and Ball Band rubber footwear, waterproof footwear, galoshes and the like. They have Nite Aire and Nite Life

house slippers, and Acme cowboy boots and Wellington boots.

They have had a line of H. C. Godman shoes, in that town and they have had Heydays there. The reason for the discontinuance of the H. C. Godman shoes is that they simply did not get that kind of business. They were buying the arch-type shoes, and didn't acquire enough of that business for it to be profitable enough to handle them. On the Heyday line of shoes, he had them in Olney for years and the salesman wanted him to put them in Mount Vernon. The salesman had a small account in Mount Vernon, and when the witness put them in, with the understanding he would be the only one to have them, the other account continued to have them. They did not prove to be successful with the witness in that town. They did not prove to be important enough to compete with another [fol. 293] merchant that had those shoes. In other words, through his own business decision he eliminated both the Godman and the Heyday shoes.

Among the brands of shoes previously named by the witness, the Hush Puppy brand is not a Brown Shoe Company brand. Neither are Nite Aire house slippers, B. F. Goodrich shoes, Ball Band water proof shoes, Acme Cowboy boots and Wellingtons. Hush Puppy shoes is a line of men's dress oxford shoes in the same price range as the Pedwin shoes. He carries Goodrich and Ball Band shoes because he thinks they are the best line of shoes. He carries Ball Band rubber footwear because he thinks it is the best established best nationally advertised and best trade-accepted rubber footwear on the market. And by the same token he thinks the B. F. Goodrich has their P. F. —posture foundation canvas shoe, which is the best advertised and trade-accepted canvas shoe on the market. They are both available and they had both been established in his Olney store, and he could buy them by quantity discounts.

The witness doesn't think that U. S. brand Keds was more highly advertised than the other. He thinks P. F. has the finest brand of canvas shoes. Keds had never been in their town. He could have had them. When the salesman makes Olney, the witness talks to him in front of the store, but he has been very successful with P.F.'s.

When the witness went on the franchise program with his Mount Vernon store, the factor of record keeping or bookkeeping was an important part of his decision. He said the thing that helps him in operating a shoe store, and particularly at this time when he was operating a store 75 miles from his home, was to be able to see the number of pairs sold in every department, the inventory, the pairs that he had on hand, and in working out a buying guide where he wouldn't overbuy and still buy enough shoes to have at the right season. And that's what this system gave him. He had a monthly report made out each month on the store's operations. He could sit down and [fol. 294] study that and study how many shoes had been sold that month, how many pairs had been sold that year up to date. If it was in July he had a record of what was the total pairs in every department. And that was a big help to him in operating a store where he wasn't on the sales floor all the time.

Hearing Examiner Creel: Well, I don't understand why your manager couldn't keep that record independent of anybody's bookkeeping system. Couldn't he keep that record himself, make up his own forms? What's unique about the system that Brown had that you couldn't do yourself or couldn't make out yourself?

The Witness: Well, you need a little guidance in making out a monthly report. It isn't the average boy that you can pick up on the street and teach him the shoe business that can make out one of those monthly reports and show your net worth without some guidance. I can teach him to sell shoes, but I am no bookkeeper and I can't teach him to make out one of those monthly reports.

A fieldman of Brown Shoe Company would come by and show his manager how to make the reports out. And with that help, that enabled him to determine his buying program in regard to his Mount Vernon Store. Before he went on the franchise program at Olney he adopted part of a similar plan there. The store adopted just his pairs-sold record only. He did not keep an invoice register or a perpetual inventory. He did not make out a monthly report. He only kept the pairs sold.

As the owner of those two stores the witness handled the buying for both of them. The Olney store went on the

program on April 1, 1960. The witness has had his own store in Olney since 1938. That store was carrying the following lines of shoes when it went on the Brown franchise program: Florsheim, Freemans, Pedwins, Hush Puppies, Acmes, in men's shoes; Red Cross, Life Stride, Smartaires, Godman, Heydays, Glamour Debs and Robinettes in the women's division; Buster Brown and Robin Hood in children's shoes; in canvas footwear, B. F. Goodrich; rubber [fol. 295] footwear, Ball Band. He carried Nite Aires and Nite Life house slippers. He carried Wolverine work shoes and a line of Hush Puppy dress shoes for men. He carried some Endicott-Johnson work shoes and some Endicott-Johnson boys' work shoes.

The witness had dropped Red Cross shoes from his store since going on the Brown franchise program. As to why he did that, the witness said, I put in some Naturalizer shoes when I went on the franchise basis. I carried both in the same price range, Red Cross and Naturalizer, and it was my idea to carry both for a while until I decided which way to go, knowing that I couldn't profitably handle two lines forever in the same price range. It is too hard to merchandise two lines. But I had had Red Cross for years in Olney, and you don't drop a line of shoes just on the spur of the moment. But after we had them one season my sales people—I have three people in my Olney store besides myself. We discussed it, and it was their decision, along with mine—but mainly from their decision—that we go to Naturalizer shoes rather than to buy from Red Cross. They like the Naturalizer shoes, they thought they sold better and they chose to go that way. So when this Red Cross salesman came through last October or November for spring shoes I told him that I chose not to give him a spring order, that I was going for Naturalizer shoes, however, I would like to go ahead and special-order a few Red Cross shoes when I had the opportunity. I have done that. In November and December it was all right. But in January, when I special-ordered some Red Cross shoes, they stamped on my order, "No longer a franchise dealer and couldn't fill the order."

The witness had been a Red Cross dealer since 1938. Where they got the word "franchise" he doesn't know. But on the order they had a rubber stamp, "No longer a



Red Cross franchise dealer, unable to fill the order." He opened his store with those shoes in 1938. The term "franchise" in the shoe business is sometimes used as a sort of an alternative word for "customer". In this case of the Red Cross shoes he thinks he had a franchise with Red Cross shoes. He had a promise of the salesman that he wouldn't go up the street and place Red Cross shoes. If he had the witness would quit them. In a town of [fol. 296] 8500 he doesn't like to compete against another store that has the same brand shoe. As to whether that is perhaps the way the term "franchise" is used, the witness said, that's the way we term it. He did not have a written contract with the Red Cross shoe people. It was pretty much a gentlemen's agreement. In a town of 8500 if you buy a line of shoes a salesman is not going to go up the street and peddle it to a competitor. That seems to be customary in the shoe business.

As to whether the witness had made any changes in the other lines in his Olney store since it became a franchise store on April 1, he said he had discontinued most all of those Freeman shoes. They like the Roblee shoe better. They like the service end of the Roblee shoe better. He was not told he had to put in Roblees. This was a choice of his. They have had Roblee shoes in Mount Vernon for years. They like them. They were getting along well with them. They were not getting along too well with their Freeman line. They didn't think they were moving the shoe well enough. They were having trouble on delivery, on mail orders. They were getting back orders when they thought that Freeman stock should have been complete enough to fill their order. And they just didn't think they were merchandising the shoes as well as the Mount Vernon store was merchandising Roblee shoes. So that's why they changed.

Q. You stated in connection with your decision to discontinue ordering Red Cross and devoting emphasis to Naturalizer, that you couldn't merchandise two lines successfully in the same price line at the same time.

Mr. Rogel: I object to that, Your Honor, I don't remember that testimony.

Hearing Examiner Creel: Well, he said something very similar to that. Overruled.

A. In a store the size I operate—

By Mr. Burke:

Q. Is that the substance of what you said?

A. Yes. That's exactly right.

[fol. 297] In a store the size of the witness' store in Olney—and he has a pretty good established and pretty good volume store for a town of 8500 people—there's a limit of how many shoes you can sell in your top-grade shoe, which would be the Naturalizer on top-grade shoes. They are from \$10.95 to \$14.95. That's in your high-price shoes. You have only so many customers that will pay that price, and there's a limit as to how many shoes of that price you can carry. And sometimes the line is pretty small when you are trying to buy two lines of shoes. And they will overlap on shoes.

Salesmen come and call on you in a 2-month time. He will buy spring shoes from a shoe company for his store from October 1 to December 1. That's when your salesmen usually call on you to sell you spring shoes. Should he happen to buy Red Cross shoes the first of October and his Naturalizer salesman wouldn't happen to get here until the last of November, you might have a period of nearly 60 days elapse.

Regardless of notifications that you get on the styles you buy, you still are overlapping. You can buy nearly the same style shoe and not realize it. And then at the end the shoes come in and you say, "Gee, I wouldn't have needed those." You can't manage two lines of shoes in a store of his size, shoes nearly identical in price and styles, in catering to the same type customers.

The Naturalizer line of shoes is his highest price line of women's shoes.

Knowing what sizes of shoes to buy takes years of experience. He spent 9½ years with a chain shoe store in his town until he had enough nerve to go on his own. And you watch your stocks. They have certain sizes of shoes they buy. Quadruple A's you buy much more than B's. They know the heart sizes to buy in, and they know

where to buy two pair or a few. You just do that from experience. When you are buying shoes you also buy style and patterns and heel heights, in addition to sizes. The shoe business is a very competitive business. And they have so many different trims of shoes, bows on them, and different counters of shoes and different shaped [fol. 298] heels and shaped toes. One shoe you will sell in a style shoe, and you will buy it in narrower widths than you will an every-day shoe as a woman wants a little looser fit there. This would definitely influence the inventory as to the type shoes you carry. Your style shoes must be closed out each season. You can't carry over a high-fashion shoe for the second season. In an everyday fashion occasionally you can. You buy a little broader sizes in a staple shoe. And, of course, your pairs sold definitely would influence your inventory. If you don't sell a shoe you had better not have them in stock. You aren't going to make any money if you don't turn them.

If you carried two lines in the same price range in order to fit your customers' needs, as to whether that would have an effect on your inventory situation, the witness answered, if they are two lines that are entirely different there might be some excuse to carry both lines to fit your customers' needs. If the two lines are very similar he doubts if there would be an excuse to carry two lines of shoes. He doesn't think you would need two lines of shoes. He doesn't think you would need two lines of shoes to take care of your customers' needs.

The carrying of two lines in the same price range complicates the inventory situation very much. You might overlap patterns unintentionally. You might get two different style patent leather pumps for spring that were so nearly the same that you wouldn't need them, and you just don't balance out your stock, buying two lines of shoes. You can do it so much better if you have one line of shoes spread out before you. You have all the different shaped toes and heels. Suppose you are able to buy 500 pairs of shoes for a spring shipment and you are going to buy those in 25 patterns. You can pick out your 25 shoes better if you have got them all right here than if you buy 12 pairs from this line and maybe 60 days later buy 13 patterns from another line. When he talks about a differ-

ent line he is talking about a different manufacturer. Like Red Cross is a line of shoes with him in his store or Naturalizer in the franchise line, and they are both in the same price range.

[fol. 299] Hearing Examiner Creel: Won't one line have certain numbers that are distinctive, that won't be anything like another shoe of another line?

The Witness: Not very often. There is nothing to keep one company from going out and buying a shoe and copying it. They may have it for one season, but that's about all. In our business there's a lot of copying of shoes. They will all have shoes very similar.

As to whether it is an advantage to carry more than one line of the same price range and style, the witness said, my store I think you are better off with one line of shoes and concentrate on that one line and advertise that one line and carry more widths in that one line of shoes than divided up in two or three lines and not have an adequate stock of anything. And your turnover and your pairs sold would keep you from having an adequate stock if you carried more than one line of shoes in my stores. He is talking about his Olney and Mount Vernon stores in his experience.

The witness went on to say, we have got to have widths to fit people correctly. People don't come in and buy their kids and their wife a pair of shoes and take them home any more, as a rule. They come in and sit down and you fit their feet. And if you are concentrating on one line of shoes you can buy more widths in that one line of shoes than if you are buying two lines of shoes and are buying a few heart sizes in both of them. Heart sizes are the popular sizes.

I may not be very good at explaining this, but the shoe business—I have just been in it all my life. I have sold shoes since I was 19 years old. And some of those things you are with all the time you don't sit down and explain, but you have got turnover to consider in shoes.

You have got turnover to consider in shoes, and you just can't go out and buy more shoes than you can sell that season. We want 2-time turnover in our stock, and in some departments we need a 2½ time turnover. We need to turn our stock two and one-half times a year.

And if you are selling 300 pairs of shoes in one department, you sure can't go out and buy 500 pairs. And if [fol. 300] you are buying some two or three lines you just pretty soon have got a whole bunch of different patterns and widths that don't fit in. And you just can't merchandise that way. Your salesman can sell a pair of shoes if he has got a good pattern and he has got all sizes in that pattern or as many sizes as you can profitably stock for him to work with. That is what is meant by concentrating on a line. Heart sizes are the popular sizes in the lengths and widths. A women's line of shoes: Say the sizes would start at 4 to 10. Well, you are not going to sell as many 4's and 10's as you would in the middle where you have the majority of feet to fit in those sizes. And the same with widths. You sell wider widths down here in the smaller sizes. The heel size has something to do with the heart sizes also. You don't see a woman wearing a 10 size shoe, a great big woman, with a 3-inch heel. She will buy a lower heel. But the little lady, the small lady, will buy a high-heel shoe and get by with it all right. So you wouldn't have those big sizes in the high-heel shoes. You may buy one or two in your store for the woman that has to have it for an exceptional occasion.

Concentration on a line very definitely helps him as a merchant in meeting his customer demands in these areas he has just been talking about.

Hearing Examiner Creel: Don't you miss a lot of customers, though, that are sold on a particular brand if you don't have that brand?

The Witness: I would rather have one good brand and have good sizes in it than to have a few in two or three brands and not have enough to show any of them. That's the answer.

The selection of the brands of shoes that are carried in his two stores is the decision of the witness, entirely.

. . . . .

No one from Brown Shoe Company tells the witness what to buy. They do not tell him what not to buy. He said, you asked me if they tell you what lines not to buy. The [fol. 301] fieldman working in my stores will work the

turnovers. They will advise you and show you, from your figures, the shoes that do not turn over. They will work with you on the figures and the pairs on hand, and you can see whether the line is profitable or not. They never tell you you have to drop a line.

Hearing Examiner Creel: Are you aware that your agreement with Brown provides that you not carry competing lines?

The Witness: No, sir. They never told me that. I have got competing lines in my store.

Hearing Examiner Creel: Have you ever read your agreement?

The Witness: I don't have an agreement.

Hearing Examiner Creel: You don't have a franchise agreement?

The Witness: No.

By Mr. Burke:

Q. Did you ever sign any agreement?

A. No.

Hearing Examiner Creel: As I recall the testimony of the Brown people, some of the franchise dealers had agreements and some did not. Is that right?

Mr. Burke: That's right. And I believe—

Hearing Examiner Creel: And he is one of those that did not?

Mr. Burke: That's right. And I don't believe those agreements have been used for over 2 years.

Hearing Examiner Creel: Go ahead, sir.

The lines of shoes the witness carries are his own decision. In determining what lines to carry, he said if the line of shoes that he carries is selling well enough that it's making him money, he keeps the line of shoes in his stock. In other words, it's the performance of the line of shoes. If the figures of the pairs sold and the pairs in stock were not good enough, were not turning [fols. 302-304] well enough, he would discontinue the line of shoes.

The witness is not acquainted with the Huth-James line of men's and boy's shoes. He has seen it advertised. He has heard of them, but he doesn't know the names of the



shoes that they manufacture or sell. Their salesman never comes to see him.

He has carried a line of shoes manufactured by Leverenz. He does not still carry them. The shoes were not of the quality that his competing line that he had established in the store was. The workmanship was not as good. The trade acceptance was not as good. In other words, they did not move for him at a profit.

. . . . .

[fol. 305] As to whether there are any other retailers that handle the Brown line of shoes in the two cities where the witness has his stores, there are outlet stores in both towns. These stores buy cancellations and any odds and ends anyplace that they can buy them. They can buy them down here on Washington Avenue in St. Louis. And in those they get a lot of Brown Shoe Company products. But no place do they have them elsewhere in town where they advertise them under the names that they are known by.

The witness has never carried any Weyenberg shoes in either of his stores. No salesman has come around to see him about Weyenberg shoes that he remembers. They have lots of salesmen who do show them shoes and who try to sell them shoes.

He has carried Clinic shoes in his store for quite some time and still carries them. That's a nurse type shoe. It's a white shoe to sell to nurses. It is carried just in the Olney store. It is not carried in the Mount Vernon store because they have an account in that town. (Tr. 758) The witness has told the salesman that any time he didn't have an account down there he would like to have them. As to whether it would be to his benefit to carry Clinics if another store in town carries them, he said, we think it is unethical in towns of the size we are to try to steal a line of shoes from another store. We don't think it is good to both carry the same line of shoes. It would affect the performance of those shoes. A man can always run a special on his shoe, and you have got the same brand in your window at the regular price and it hurts you. We do not want the same brand of shoe elsewhere in town.

Q. Mr. Musgrove, in regard to continuing on the franchise program, are you under any requirement to continue, or what is the situation?

A. I can quit any time I choose.

Cross-examination.

The witness has had his Olney store since August of 1938. And that one became a Brown franchise store in 1960. The Mount Vernon store he opened in 1952 and he started that as a Brown franchise store.

[fol. 306] The Mount Vernon store when it was opened in August of 1952 was in a very small building, and they had what they called a ladies' and children's store. They operated that one for about 4 years, and then they were able to acquire a larger room and a better location, and then they went into a family operation, adding men's shoes. They opened up in the new building in November of 1957. They were in the old building about 5 years. November 1957 they went into the new building.

The brands the store carried while it was just a ladies' and children's shoe store were: Naturalizers, Life Stride, a line of H. C. Godman shoes, and Heydays; in children's shoes, Buster Brown and Robin Hood; back on those ladies' lines, the growing girl line or young miss lines were Glamour Debs and Robinettes; and, in the house slippers, Nite Aires and Nite Life.

The H. C. Godman Company is out of Columbus, Ohio. They have got a long line of ladies' shoes. Now, they have men's shoes and children's shoes, but for a long while it was a ladies' line. The witness carried the ladies' line in his stores. The price of the Godman line would run from \$7.99 to \$11.99. The Life Stride shoe was in that price range. Some of Godman's best shoes were about the same as Naturalizer's low price. Naturalizer will start their shoes at \$11.99 now, but back at that time they started a lot of them at \$10.99. He was talking about the Mount Vernon store. The witness carried both of the lines from 1952 to 1960. He pulled the Godman shoe out of Mount Vernon very recently. He had a few of them down there. He was in that store yesterday on the way over here, and some lady was wanting the Godman

shoe while he was in there, and he was wondering if he could send them to her. He has got the order right here: 8-AA.

It frequently occurs in the shoe business that they come in and ask for a specific make of shoe. In this case, his saleslady tried to sell her a different shoe and wasn't successful, and they ended up with her order to wait until he could send her the shoe. The witness agreed that it is safe [fol. 307] to say that at least some people have a brand preference in buying shoes. He carries the Godman brand under the name of Tarsal Tread. You can buy them under the name Hug Tight, Teen Travelers.

The witness did not receive any assistance from Brown in the way of a loan or financing at the time he opened his Mount Vernon store. He has never had a dollar from Brown Shoe Company. He has never had any financial help from Brown Shoe Company or anyone else.

The witness was asked whether he had, or now has, any other lines of shoes in the Mount Vernon store that conflict with the Brown lines in the sense that they are essentially the same price range, the same type of shoe? He said he had Heydays in Mount Vernon that were in the same price range with Naturalizers. He thought they made a little different type shoe than Naturalizers, but they were in the same price range. They closed out their last Heyday shoe at this sale that just ended in January. But as far as quitting buying them, they quit buying them about three seasons ago.

At the Mount Vernon store, other than Brown lines they have Hush Puppies in the leather line, and Acme. Acme makes a line of Wellington boots and cowboy boots for children as well as men. But in the women's and children's line the witness agreed that he is all Brown in those lines at the Mount Vernon store.

Hush Puppies are men's shoes in the same price range as Brown's Pedwin brand. He has had them in Mount Vernon for 4 years. The witness plans to continue that line as long as it sells good like it is now. He had testified it is much better now to do this sort of thing, i.e., not to have both Pedwin and Hush Puppy, so he must have some peculiar reason here for doing it. The reason is that they make a different kind of leather in the shoe. Hush Puppy

makes a shoe with genuine pigskin leather and Brown is not able to supply him with men's shoes made out of pigskin leather. As to whether he carries a complete Hush Puppy line or just pigskin numbers, he said as far as he knows that is their complete line. The Hush Puppy line is only pigskin shoes. Brown doesn't have shoes made out [fol. 308] of the same leather. To the average customer it will feel like the same leather, but it doesn't perform quite the same. It is not genuine pigskin leather.

When they put in Acmes, Brown had a Wellington boot. A Wellington boot is a boot without any last that comes up about 10 inches tall and you just slip into. It became popular in World War II as an Army aviator's flying boot. Now, Brown Shoe Company in their Pedwin line had a Wellington boot, but they are not in the boot business and they can't compete with a company that makes nothing but boots. He had had Acmes in Olney for years, and he put in Acmes down there. And they had never argued with him on Acme because all he has to do is show them the Acme boot.

As to whether he carries any full lines of shoes in Mount Vernon which duplicate or overlap or conflict with the Brown lines, the witness said, the Heyday shoe would conflict with certain shoes that Brown makes, and Acme would conflict to a certain extent. He thinks smart shoe men can tell the difference between Hush Puppies and the Pedwin shoe; and the Heydays. When he had them in that town they had a definite place for them. The witness understands "conflicting" lines to mean lines that they would sell to the same customer at the same approximate price. It would serve the same purpose in his store, represent the same type shoe, and sell to the same customer.

Brown Shoe Company in their Pedwin line would make a complete line of leather shoes. He carries the complete Pedwin line. They would also make in that same Pedwin line a good stock of brushed leather. It looks like suede; nappy leather that you would not put shoe polish on and shine it. There are two types of shoes. One is a shiny leather and the other one is a nappy leather. The nappy leather is a direct competitor of Hush Puppies. If someone else had Hush Puppies in Mount Vernon, another competitor had it, he would have to do a business with

Brown Shoe Company's Pedwin line of brushed leathers. He would have to compete against Hush Puppies with [fol. 309] Brown Shoe Company's brushed leather. In his way of thinking they are not of the same quality leather and are not the same leather. So he buys Hush Puppies. He had them all these years, and he continued to buy them. He will buy two-thirds as many Hush Puppies as he buys Pedwins. He buys about 9 different styles from Hush Puppy. They are all pigskin. They are made by the House of Kraus, which owns Wolverine Shoe Company.

In his Olney store, he did not buy conflicting patterns or lines. His principal line of women's shoes from 1938 up to 1960 was Red Cross. This was his highest priced shoe; his main advertised shoe. It was the prestige line in his store. Thirty-five percent of his total women's sales was accounted for by Red Cross.

Heydays and Life Stride are not in the same price class. It would be Haydays and Red Cross or Heydays and Naturalizer. They are up in the top price range in his store. He carried Heydays and Red Cross together for quite some time. Heyday was the first to come out with a different stitch shoe, a stitched-down shoe. They had a shoe Red Cross did not have. He didn't buy the same shoe from two different companies. Heyday did not make a fashion shoe. They only made a walking, low-heel-type shoe. Neither Life Stride nor Godman compete in the same price range with these two lines at all. They were under them.

Life Stride and Godman are in approximately the same price range. He has carried those two for a number of years. As to his reasons for that, he said, for 9½ years in my town I operated a chain shoe store that was owned by H. C. Godman Company. When I left that store I went out on my own and went ahead and bought their shoes. There were reasons for that. Their own store wasn't selling enough of them. I operated my own store for 3 years. I had the opportunity to go back and buy this chain shoe store out that I had just left 3 years ago, and I bought everything in the store except a box of stationery. I bought the business that I had established there for 9½ years. I went ahead with the same line of shoes. It's a profitable line of shoes. I have no intentions of closing

[fol. 310] that line of shoes out as long as it is making me money. I had Life Strides in my store the 3 years. I had a line of shoes from Brown Shoe Company comparable to life Stride. They didn't use that name back in 1938. But from 1938 to August 1941 I operated my own little shoe store on Federal Avenue with my lines. When I bought the Miller-Jones store, which was owned by H. C. Godman Company, I moved that stock of goods up on Main Street into the Miller-Jones room that they were in and kept my same lines.

I bought a higher fashioned shoe from Life Stride and bought a more staple shoe from Godman. The Godman business had been established in that store for 9½ years on those staple shoes. And they are the type of customers who do not like to change. They are the type of customer whose order I have here in my pocket, that don't like to change. And I think Life Stride had a better line of fashionable shoes. That all goes back to merchandising in a store. I think Life Stride is a little better in their high-fashion shoe. They both make high-fashion shoes.

During that 3- or 4-year period, and for perhaps a longer time, he was carrying four women's lines of shoes. His operation was profitable during this period. He found difficulty in managing inventory. This is one reason that he went to a franchise setup in his Olney store. His Mount Vernon store was being operated pretty easy on a franchise basis. They could sit down and know just how many to buy, and it seemed a lot easier down there on a franchise basis.

He still has about 4 lines in his Olney store. It is no different than it was before except he has dropped Red Cross and Heydays, but he still has Life Stride, Naturalizers, Godman, and a line of Smartaires. He still has 4 lines of shoes.

His operation in Olney is not much different than it has ever been, except he has concentrated on Naturalizer instead of Red Cross entirely and on Roblees instead of heavy on Freemans. He still has a few Freeman shoes in his store and buys a few pairs. He is buying their French toe shoe. He is not sure that Roblee even has it. [fol. 311] It is the same thing as with the Godman shoe. A French-toed shoe is a style an old man wants to buy. And



as long as Freeman is going to sell him that shoe he is going to go ahead with it. He wasn't interested enough to look whether Brown has a number, because he wanted to carry that Freeman shoe that that man has been buying off of him since 1938, and it's hard to change this man, and you buy a French-toed shoe from Freeman.

With respect to women's shoes again, the only outside brands he is carrying are H. C. Godman, and Clinic in the white nurse's shoe. That's the Juvenile Company. They call their white nurse's shoe Clinic, and they make a black shoe called Foot Thrills and he carried those, too. It is made like a Clinic shoe, but it is a black shoe. His reason for carrying that additional line is the good trade acceptance on Clinic shoes. It's advertised far more than any other shoe of that type in the country. It's advertised in all the nurses' magazines and things like that. There's a trade acceptance, and they give him stock service. They have got the shoes to back you up. Every time you order them you can get them. All of his white nurses' shoes are Clinic shoes. And there are two patterns of the loafer, one twelve-eighths heel, a ripple sole, a crepe sole, with a wedge heel, and an outside heel. That is six patterns. And you buy widths in them. You can buy widths in them. You buy sizes in them. You buy quads to C's, and you buy them up to 10's. You can't skip the width. The only way Clinic will sell you shoes is to put in a full range of sizes. He has the Brown Naturalizer line of white shoes in his Mount Vernon store, and they have similar shoes. But the nurses don't know them like they do Clinic shoes.

He bought the Naturalizer line for last spring's operation. Prior to that time he had tried a few Naturalizers out from time to time by bringing them up from the Mount Vernon store. He bought them in the fall of 1959 for the spring of 1960. He went on this franchise basis in the spring of 1960, at Olney. And he bought the shoes to go in when he sets his books up for a perpetual inventory. He bought both the Naturalizer and Red Cross. He tried to dovetail them together.

[fol. 312] As to when he first talked to the Brown people about making this store a Brown franchise store, the witness said, when you work with them all the time, like you do

in Mount Vernon, that thing exists all the time. They were always urging him to become a franchise store. They would like to have the Olney store as a franchise store. It is a profitable store. It makes them a good record. And "When are you going to put the Olney store on the franchise basis?" There was never any pressure put on me that I would have to put—Nothing was said to the witness about adopting the Naturalizer line in connection with becoming a Brown franchise store. He said, there were things said about the Naturalizer line but not in connection with being a Brown franchise store. Always a comparison. "Look at the Naturalizer operation in Mount Vernon. A very profitable operation." In a kidding way. "Why don't you get smart and put them in Olney?" Always suggesting that we put Naturalizer in Olney. And when I would buy Naturalizer shoes for the Mount Vernon store, "Don't you want to buy them for Olney, now that we have got them bought for Mount Vernon?"

The witness had Life Strides and Smartaires in Olney at the time. He still has Red Cross, Heydays, and Godmans. He has discontinued Heyday shoes in both stores because of performance. He wants that straight there. He had discontinued them by last April. Heyday shoes have slipped a great deal in his way of thinking, and they are out of his stores. As to what percentage of his women's sales in Olney were accounted for by Life Stride and Smartaires together, before he took on Naturalizer, that would be awfully hard for him to guess, and it would be purely a guess. He has figures that he could tell you how many pairs that he sells, but it would be hard to guess. Life Stride was just about as strong a line as the Red Cross line, about as many pairs sold. Godman about the same. Smartaires is a new line he is trying to work in, a lower-priced line than Life Strides. You have reasons for buying different lines of shoes. You just don't buy them because a salesman wants to sell them to you. Life Stride pairagewise is a little bit under his Red Cross, not [fol. 313] very much, and now he thinks, a little bit under his Naturalizers.

His testimony was that he tried Naturalizer for a season, in the spring of 1960. They decided to drop Red Cross

in October of 1960. His 3 salesmen that worked for him in his store and he talked it over, and they said, "We wish you would go all the way with Naturalizers. We are getting along better with them. We are getting better trade acceptance." He had built-up public acceptance for Red Cross. It was his intention to continue to have some Red Cross but they cut him off. He has sold Red Cross shoes in Olney for 20 years, since 1938. He opened up with Red Cross shoes, and you have got a lot of call on Red Cross shoes.

The men's lines he had just prior to becoming a Brown franchise store in Olney were Florsheim, Freeman, Pedwin, and Hush Puppy. Now he has Florsheim, a good stock of Roblee, and a small stock of Freeman, Pedwin, and Hush Puppy. Florsheim is a higher-priced shoe. The same considerations for Hush Puppy Would apply there as apply to the Mount Vernon operation. He carried them both for years. Freeman is the French-toe number that he is going ahead with now in that price range.

There were no changes in his children's line in Olney after becoming a Brown franchise store. He has had Buster Brown and Robin Hood since 1938. The witness was asked if there was an inconsistency in his testimony that it would be much better saleswise and inventory-wise not to have conflicting lines, and the fact that he carries three or four lines of women's shoes and three or four lines of men's shoes. He said, they are just not conflicting lines. The line of shoes all have their place in my store. The Pedwin and the Hush Puppy are conflicting if you want to get technical on the kind of leather. And I am going to argue that the Hush Puppy has the best leather over the Pedwin. Florsheim is higher than Roblee or Freeman. Your conflicting line there is Roblee and Freeman. And I stated that it was much easier to go ahead with that French-toed shoe with the old man that comes into my store than to go ahead with Roblee [fol. 314] and change lines on him. I am going ahead with that Freeman French-toed shoe. Now there is a conflicting line, you might say, but still that Freeman French-toed shoe only competes for style in two colors and mostly brown.

Now, on your other lines of shoes, I haven't quoted you

anything that conflicted. I told you I dropped Red Cross shoes last October with the hopes I could special-order a few pairs. Red Cross and Naturalizers are conflicting lines; yes, sir. But I dropped Red Cross shoes because my men like the Naturalizer shoes better. My Mount Vernon boy has always told me—He worked for me in Mount Vernon before he went to Olney; and he said, "Alvin, you would do better with Naturalizers." But my intention was to special-order Red Cross to hold a few customers. But I wasn't buying a whole stock.

I don't have conflicting lines. The only conflicting lines would be between Red Cross and Naturalizers. The shoes are similar, and I only bought one against the other. I only did it this one year. There is no place else that I have bought a conflicting line except, you might say, Freeman and Roblee, and I have tried to explain why there. There is no place else I have bought a conflicting line. The Buster Brown are the higher-priced shoes, and the Robin Hood are the cheaper shoes. And I am not buying conflicting lines. There would be some place in Life Stride and Godman shoes. As to whether Red Cross, Heydays, Life Stride and Goodman aren't overlapping in many ways, the witness said, not in Red Cross or Heydays particularly. Heyday makes a particular kind of shoe in the same price range as Red Cross. You might find a few of the shoes that are overlapping. When Heyday first came out with their shoe they were the first to build a shoe like that. It wasn't very long until everybody copied it to a certain extent. Regarding the testimony of the witness that it would be much better to deal with a single source of supply and take all of the shoes from that line, he said, that's the way they did in Mount Vernon. If you would go to the Mount Vernon records you would find there were very few conflicting lines in Mount Vernon. But in Olney he bought out the H. C. Godman store, called [fol. 315] "Miller-Jones," and those shoes were established. They were established to Olney people, who do not change brands of shoes easily, and he didn't think it is profitable to drop that line of shoes.

As to his understanding of the Brown franchise program, and what he must do to be a Brown franchise dealer, the witness said, I don't feel that I need to do any-

thing different than I have always done. I work with the fieldman when he comes through. He helps me work up a buying guide. I appreciate the news letters that you get from Brown Shoe Company, suggesting things that you already know but perhaps don't do. To be sure to clear your stock out good at a sales period. "Don't kid yourself. Let's get clean merchandise to start the next season." At this time of year you get letters stating, "Let's peak your stock for Easter business." We know that. We keep so busy sometimes that we don't sit down and do it. Maybe a letter from Brown, saying it is only so many weeks until Easter, and maybe you will stay a little bit longer on Saturday night and get that order in.

Q. I am directing your attention to the principal lines carried, the relation of the Brown program to the lines that are carried. What is your understanding there? Can you be a Brown franchise store if you don't carry any Brown shoes? I think that's pretty ridiculous. So we can disregard that. So to what extent do you have to go along with Brown in order to be a Brown franchise store?

A. I couldn't tell you to what extent, but I think the more Brown shoes you carry the more help your Brown fieldman can be to you. Suppose I was buying Red Cross shoes and Naturalizer shoes. Suppose I continued that and my operation was big enough to continue that. I don't think the Brown fieldman would be of much help in buying Red Cross shoes. I don't think he knows the line well enough to be of much help to me.

Q. Is it that the principal line of shoes should be Brown in each of the categories—men's, women's and children's?

A. Not if another line would make me more money. If you would see Clinic lines of shoes in my store, that's the [fol. 316] principal line of nurses' shoes. And I am not going to go to another brand of shoes in my Olney store instead of Clinic shoes.

Q. How far afield do you think you can go before you will cease being a Brown franchise store?

A. I can't answer that.

Q. It has never come up?

A. No.

As to what changes the witness was expected to make when he put his Olney store on the Brown franchise plan in 1960, he said, it was never discussed as any real changes to make. But I felt if we had the same lines as we had in Mount Vernon that it would work out better. If I was going to make any changes I should buy the same shoes as I bought in Mount Vernon. But they didn't come to me and say, "You have got to drop Red Cross shoes," or "You have got to drop Freeman shoes."

It was generally understood—I was never asked to drop any lines of shoes, but we were constantly talking about the job that we were doing in Mount Vernon on Naturalizers, which I didn't have in Olney, and Roblee, which I didn't have in Olney. When I would buy them. It was a salesman. It wasn't always the fieldman. It was a salesman that would sell me that line of thinking. "Why can't we put some of those in your Olney store?" He wanted the witness to take on the Naturalizer and Roblee. Then he would have the same lines in Olney as they had in Mount Vernon, which they had been very successful with there.

. . . . .

Hearing Examiner Creel: It is correct, is it, that you never entered into a written franchise agreement with Brown, either for your Mount Vernon or Olney stores?

The Witness: I can't remember of ever signing an agreement for the Mount Vernon store. But that's in 1952. But I can't remember signing it. And when we took the inventory of the Olney store last April and the fieldman was walking down the stairs to get into his car, I said, "Bill, haven't you got anything to sign?" And he said, [fol. 317] "It wouldn't be worth anything if you did sign it. If you would be happier, we can sign it. Otherwise just go ahead."

Hearing Examiner Creel: And you didn't sign?

The Witness: I did not sign.

I can't remember of ever reading an agreement when we opened up the Mount Vernon store.

The witness was asked whether it is better to disregard this conflicting line thing and pick numbers that you feel



will sell, whether they come from just a single manufacturer or four or five. He answered, I buy Acme boots because they specialize in boots only. They are the world's largest manufacturer of boots. Now, it's true that Brown Shoe Company makes one black Wellington boot and one brown Wellington boot where Acme would probably make six different patterns. They make nothing but Wellington boots Cowboy boot, and that's all I buy from them. I don't buy conflicting lines to Acme. The Acme man comes in and shows some or all of his boots, and I buy them. And then Brown comes in and shows me his boots, and I say, "No, I don't want them. I am buying Acme boots." Brown has got only one shoe they can show me. Brown Shoe Company's men's shoes. Their Pedwin shoes. That's it in that price range. In their brushed leather shoe, Hush Puppy. And he still has the Freeman French-toe shoe.

Q. And from a sales standpoint, then, you feel that you should buy the shoes that are going to sell in your store? Isn't that what motivates your buying? Whether it comes from one line or ten lines. Isn't that true?

A. It's got to be a profitable line for me. I am not going to buy from ten lines of shoes that make the same price range shoe. I am not going to buy your one line of shoes and buy one shoe out of it and then buy another shoe out of another line. I have been in this business since 1929, and you just can't do that. Now, if you will go out here and buy Acme's Cowboy boots, yes. That's a nationally advertised boot. I buy it. But just because a salesman comes in my store and shows me his line from a different company, I am not going to buy it. This may be [fol. 318] his best shoe, but I am not going to buy this one shoe from that one company just because it is his best shoe. I would go broke. I have got to pick out the line that has the best trade acceptance and covers the entire picture the best.

The Clinic has better trade acceptance than Brown's nurse's shoe by far. The Clinic specializes in nurses' shoes. It was established in his store before he ever had any Naturalizer shoes in the Olney store. He can't tell you how long Naturalizer's white line is. He has only two numbers in Mount Vernon. He has got seven numbers in

Olney. Clinics were established in his Olney store. Brown's line is not near as long. He knows they have two similar shoes to what he stocks in the Clinic line. He stocks seven shoes from Clinic, but Clinic probably stocks 20 patterns in the white Clinic shoe. He doesn't know how many Brown Shoe Company stocks.

The witness does not feel that in order to be a successful store he has to buy all of his shoes, men's, women's, and children's, from Brown, or from any one manufacturer. If you carry the Red Cross in the women's, the Buster Browns in the children's, and, Freeman's shoes in the men's, he doesn't think that you would take as much advantage of your fieldman coming around and helping you. He doesn't think you can do as good with your bookkeeping system. He doesn't think you can have as good a buying guide.

Counsel for the Commission said he was not talking about the franchise program, he was just talking about running a successful shoe store. The witness said, and I am trying to get over the idea that I can run a more successful shoe store with the franchise basis.

Q. But that isn't what I was asking. I was asking you if there is any reason why, in order to run a successful shoe store, you should buy each of the different lines in a family shoe store from the same manufacturer.

A. I think that I can get more advantage from a fieldman. I can get more advantages in a buying guide by buying from the same manufacturer if the lines of shoes have the same trade acceptance and are equal in value in my store.

[fols. 319-320] Q. I know that you can get more use out of the fieldman because he can work on all your lines. But aside from that, I am talking about from your sales standpoint, from being able to advertise and sell in your market. Is there any reason why you should concentrate on Brown or International or any other and buy all of their shoes?

A. The only reason is that I think I can run a better store by buying from the one company and having the fieldman work with me. Your question doesn't make sense with me, with what I am trying to say. Why did I go on